RECORD AND BRIEFS

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No. 16-

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

BRISTOL-MYERS SQUIBB COMPANY,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the California Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Due Process Clause permits a state court to exercise specific jurisdiction over a defendant only when the plaintiff's claims "arise out of or relate to" the defendant's forum activities. *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985) (citation omitted). The question presented is:

Whether a plaintiff's claims arise out of or relate to a defendant's forum activities when there is no causal link between the defendant's forum contacts and the plaintiff's claims—that is, where the plaintiff's claims would be exactly the same even if the defendant had no forum contacts.

PARTIES TO THE PROCEEDING

1. Bristol-Myers Squibb Company, petitioner on review, was a defendant in the trial court and petitioner below.

2. The Superior Court of California for the County of San Francisco, respondent on review, was the respondent below.

3. The following individuals, respondents on review, were plaintiffs in the trial court and the real parties in interest below: Jean A. Bookout, Dana A. Crawford, Cedric A. Creeks, Lara A. Ellis, Dorothy A. Emerson-Evans, James A. Gogerty, William A. Greene, Kathleen A. Herman, Ruth A. Konopka, Patrick A. Mcclelland, Velva A. Neeley, Barbara A. Tabbs, James A. Thomas, Shirley A. Tincher, John A. Tomlinson, Rex A. Victory, Elizabeth A. White, Richard A. White, Lorraine Adams, Francis W. Adams, Beverley Adams, Theodore Adams, Gwendolan E. Ailes, Ricky L. Alexander, George Allen, Marie Alvin, Michael Alvin, Cheryl Anders, Judy Anderson, Bracy Anderson, David E. Andrews, Beverly R. Andrews, June M. Angel, Georgia Ann Burgin, Ronald A. Arcaroli, Eileen J. Armstrong, Stanley B. Kowaleski, Teresa B. McClelland, Thomas B. Morrison, Willie B. Thomas, James B. Watson, Thomas Badell, Beulah Baham, Charlie Baker, Faye Baker, Hinton Barnes, Brenda Beach, Michael R. Beaton, Pauline Beaton, Mary Beattie, Laura Beavers, James Beavers, Allen Bell, John Bell, Robert Bennet, Sandra Bennet, Mary Lou Bingham, Brenda Boatwright, Timothy A. Bolyard, Joyce Boone, David Booth, Paula Booth, Jacqueline Boston, Charles Botkin, Barbara Botkin, Charlie Bowie, Deborah Boyles, Donald Bradford, Constance R. Branch,

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RULE 29.6 DISCLOSURE STATEMENT

Bristol-Myers Squibb Company has no parent corporation and no publicly held company owns 10% or more of Bristol-Myers Squibb Company's stock.

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IN THE

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BRISTOL-MYERS SQUIBB COMPANY,
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SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO, *et al.*,
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On Petition for a Writ of Certiorari to the California Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Bristol-Myers Squibb Company (Bristol-Myers) respectfully petitions for a writ of certiorari to review the judgment of the California Supreme Court in this case.

OPINIONS BELOW

The California Supreme Court's opinion (Pet. App. 1a-90a) is reported at 377 P.3d 874. The California Court of Appeal's decision denying Bristol-Myers's petition for a writ of mandate (Pet. App. 91a-146a) is reported at 175 Cal. Rptr. 3d 412. The California Superior Court's opinion (Pet. App. 147a-150a) denying Bristol-Myers's motion to quash service of the summons is unreported.

JURISDICTION

The California Supreme Court entered judgment on August 29, 2016. This Court's jurisdiction rests on 28 U.S.C. § 1257(a). *See Madruga* v. *Super. Ct.*, 346 U.S. 556, 557 n.1 (1954) (the California Supreme Court's disposition of a writ petition is a final judgment under 28 U.S.C. § 1257(a)); *Burnham* v. *Super. Ct.*, 495 U.S. 604, 608 (1990) (reviewing a California appellate court's personal-jurisdiction holding following the court's denial of a writ of prohibition).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, provides:

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law.

California Code of Civil Procedure § 410.10 provides:

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

INTRODUCTION

In the 4-3 decision below, the California Supreme Court held that Bristol-Myers could be haled into the California courts on respondents' product-defect claims relating to a drug that was not manufactured or designed in California, whose marketing, packaging, and regulatory materials were not prepared in California, and that was not prescribed to, dispensed to, or ingested by respondents in California. Indeed,

the majority did not dispute that respondents' "claims would be exactly the same if [Bristol-Myers] had no contact whatsoever with California." Pet. App. 29a. Nonetheless, applying a "sliding scale approach" to personal jurisdiction, the court concluded that because Bristol-Myers marketed and sold the same drug to *other* people in California, and conducted research on *other* products in California, its contacts with the State were sufficiently "wide ranging" to justify the assertion of specific jurisdiction over claims that bore a less direct "connection" to the State. *Id.* at 29a, 32a (citation omitted).

That is not how specific jurisdiction works. This Court has emphasized time and again that specific jurisdiction lies only when "the defendant's *suit-related conduct* * * * create[s] a substantial connection with the forum State." *Walden* v. *Fiore*, 134 S. Ct. 1115, 1121 (2014) (emphasis added). It is *general* jurisdiction that exists based on "contacts [with] no apparent relationship to the [injury] that gave rise to the suit," and then only when they are sufficiently "continuous and systematic" to render the defendant "at home." *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 757 (2014) (citation omitted). Applying this straightforward distinction five years ago in *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915 (2011), the Court held that where a plaintiff's injury occurred abroad, and the product "alleged to have caused the accident was manufactured and sold abroad," North Carolina courts "lacked specific jurisdiction to adjudicate the controversy." *Id.* at 919. That holding should have resolved this case, and no amount of forum-state contacts unrelated to respondents' suit should alter that fact.

Yet California, joined by a persistent minority of courts, has resolutely resisted the Court's guidance. For decades—ever since the Court described the "relatedness" requirement for specific jurisdiction in *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408 (1984)—the California Supreme Court has been one of several state high courts, along with the Federal Circuit, to maintain that plaintiffs may obtain specific jurisdiction over a defendant even where there is *no* causal relationship between the defendant's forum-state contacts and the plaintiff's suit, provided that some nebulous "connection" exists between the contacts and the subject of the plaintiff's claims. The vast majority of courts have rejected that interpretation of the relatedness requirement, concluding that it unacceptably blurs the line between general and specific jurisdiction embodied in *Daimler* and this Court's other personal-jurisdiction cases. But the split endures, and it has resulted in not only widely divergent results in cases like this one, but also an unacceptable divide between the state and federal courts in California itself.

The Court's intervention is required to resolve the dispute. It should grant the writ, clarify that specific jurisdiction requires a causal connection between the defendant's forum contacts and the claim alleged, and reverse the decision below.

STATEMENT

1. Bristol-Myers is a global biopharmaceutical company incorporated in Delaware and headquartered in New York. Pet. App. 4a. Bristol-Myers manufactures Plavix, a prescription drug that helps prevent strokes, heart attacks, and other cardiovascular problems by inhibiting blood clots. *Id.* at 2a.

As a national company, Bristol-Myers markets and sells its products—including Plavix—in California. Pet. App. 5a. Between 2006 and 2012, Bristol-Myers sold 187 million Plavix pills in the State for $918 million in revenue. *Id.* These sales constituted only 1.1 percent of its total national sales revenue. *Id.* Also like many companies of its size, Bristol-Myers has operations in California to support its research and sales missions. *Id.* Bristol-Myers has five California offices—four research facilities and a small government-affairs office—employing 164 people, as well as 250 California sales representatives. *Id.*; Cal. R. 428. These just-over-400 employees, however, are only a fraction of Bristol-Myers's global workforce. By comparison, Bristol-Myers has 6,475 employees in just the New York-New Jersey metropolitan area. Pet. App. 4a.

2. Respondents are 575 non-California residents.[1] Pet. App. 1a; Cal. R. 1-16. They joined 86 California residents in suing Bristol-Myers and McKesson Corporation, a California-based Plavix distributor, in the San Francisco Superior Court on individual product-defect claims. Pet. App. 2a. Each respondent alleges that Bristol-Myers negligently and wrongfully designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and sold Plavix by misrepresenting the drug's safety and efficacy. *Id.* at 3a. Each respondent further claims to have suffered severe side-effects

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[1] The decision below slightly overstated the number of Bristol-Myers research facilities and the number of respondents. *Compare* Pet. App. 1a, 5a, *with* Cal. R. 1-16, 428. But the precise numbers are irrelevant.

from Plavix, and each asserts various California product-liability causes of action. *Id.* at 3a-4a.

Bristol-Myers moved to quash service of respondents' summons and to dismiss respondents' claims for lack of personal jurisdiction. Pet. App. 4a; *see* Cal. Civ. Code § 418.10(a)(1). Respondents' claims, Bristol-Myers pointed out, had no link to the company's California activities. Pet. App. 4a. Respondents were not injured by Plavix in California. *Id.* Respondents were not treated in California. *Id.* Respondents were not prescribed Plavix by California doctors, did not have their Plavix prescription filled by California pharmacies, and did not receive Plavix distributed by McKesson from California. *Id.* at 46a-47a (Werdegar, J., dissenting). Moreover, Bristol-Myers did not research Plavix at its California laboratories and did not manufacture Plavix in the State. *Id.* at 4a-5a (majority op.). And Plavix's packaging, regulatory, advertising, and marketing materials were not produced in California. *Id.* at 5a. Bristol-Myers's contacts with California played no role in respondents' claims; their claims would have been the same even if Bristol-Myers had no contact at all with California. *Id.* at 29a, 33a-34a.

The trial court denied Bristol-Myers's motion, holding that the company was subject to general jurisdiction in California because it had "wide-ranging, continuous, and systematic activities in California." Pet. App. 150a. Bristol-Myers petitioned for a writ of mandate, *see* Cal. Civ. Code § 418.10(c), which the California Court of Appeal denied. Pet. App. 91a-146a. The Court of Appeal disagreed that Bristol-Myers was subject to general jurisdiction in California. *Id.* at 112a. But it held that respondents'

claims were sufficiently related to Bristol-Myers's California activities so as to support specific jurisdiction. *Id.* at 113a-142a.

3. The California Supreme Court affirmed in a 4-3 decision. Pet. App. 1a-90a.

a. The majority agreed with Bristol-Myers that it was not subject to general jurisdiction in California. Pet. App. 9a-19a. Applying *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915 (2011), and *Daimler AG* v. *Bauman*, 134 S. Ct. 746 (2014), the majority held that Bristol-Myers was not "at home" in the State. Pet. App. 16a-19a. Bristol-Myers was not incorporated or headquartered in California—the two paradigm places for general personal jurisdiction. *Id.* at 16a. And Bristol-Myers's California activities, though significant, were not so significant in comparison to its activities elsewhere as to make Bristol-Myers at home in the State. *Id.* at 17a-18a.

The majority nonetheless held that Bristol-Myers was subject to specific jurisdiction on respondents' claims. Pet. App. 20a-44a. Two decades ago, in *Vons Cos., Inc.* v. *Seabest Foods, Inc.*, 926 P.2d 1085 (Cal. 1996), the California Supreme Court adopted a "sliding scale" to measure relatedness. Pet. App. 32a. As its name suggests, the sliding scale views "the intensity of [the defendant's] forum contacts and the connection of the [plaintiff's] claim to those contacts a[s] inversely related." *Id.* at 25a (citation omitted). That is, "the more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim." *Id.* (citation omitted). Critically, under the sliding scale, "[a] claim need not arise directly from the defendant's forum contacts in order to be suffi-

ciently related to the contact to warrant the exercise of specific jurisdiction," nor do the defendant's forum contacts "need [to] be either the proximate cause or the 'but for' cause of the plaintiff's injuries." *Id.* at 22a (citation omitted).

Applying the sliding scale, the majority found that Bristol-Myers's general business activities in the State were sufficient to subject the company to specific jurisdiction on respondents' claims. Pet. App. 27a-34a. It held that Bristol-Myers's "nationwide marketing, promotion, and distribution of Plavix created a substantial nexus between [respondents'] claims and the company's contacts in California concerning Plavix" because even though respondents did not allege that *they* ingested Plavix that was marketed, promoted, or distributed in California, their "claims are based on the same allegedly defective product and the assertedly misleading marketing and promotion of that product, which allegedly caused injuries in and outside the state." *Id.* at 28a. The majority further found that Bristol-Myers's "research and development activity in California provides an additional connection between [respondents'] claims and the company's activities in California," even though "there is no claim that Plavix itself was designed and developed in these facilities." *Id.* at 29a.

b. Justice Werdegar, joined by Justices Chin and Corrigan, dissented. Pet. App. 46a-87a.

The dissent agreed that Bristol-Myers was not subject to general jurisdiction in California. Pet. App. 46a. But the dissenters strongly disagreed that respondents' claims were related to Bristol-Myers's California activities. The majority's contrary conclu-

sion, they explained, "is not supported by specific jurisdiction decisions from the United States Supreme Court * * * or the lower federal and state courts." *Id.* at 49a. They emphasized that the majority's decision "undermines [the] essential distinction between specific and general jurisdiction." *Id.* at 50a. If the relatedness requirement is met merely because a defendant engaged in nationwide conduct—such that the conduct at issue in a plaintiff's claims is similar to conduct that also allegedly occurred in California—that would "expand[ ] specific jurisdiction to the point that, for a large category of defendants, it becomes indistinguishable from general jurisdiction." *Id.* And that result eviscerates the limits on general jurisdiction that this Court articulated in *Daimler*. As the dissent explained, what this Court "wrought in *Daimler*—a shift in the general jurisdiction standard from the 'continuous and systematic' test * * * to a much tighter 'at home' limit—[the majority] undoes today under the rubric of specific jurisdiction." *Id.* at 50a-51a.

This petition followed.

REASONS FOR GRANTING THE PETITION

I. THERE IS A DEEP AND ACKNOWLEDGED SPLIT ON THE STANDARD FOR RELATEDNESS.

The California Supreme Court's decision exacerbates a well-established conflict over when a plaintiff's suit is sufficiently connected to the defendant's contacts with the forum State to expose the defendant to specific jurisdiction. Nine circuits have held that a plaintiff's suit does not "relate to or arise out of" a defendant's forum-state contacts unless those

contacts in some way *caused* the plaintiff's injury. Two of those circuits reached that conclusion in pharmaceutical product-defect cases presenting facts materially indistinguishable from those in this case. But the California Supreme Court—joined by the Federal Circuit and the high courts of Texas and the District of Columbia—disagrees: It holds that a defendant is subject to specific jurisdiction even if the plaintiff would have suffered precisely the same injuries had the defendant never made contact with the forum. That is wrong, and the enduring division on this question is intolerable. In California, for instance, different relatedness rules govern in federal and state courts—enabling jurisdictional gamesmanship by plaintiffs and destroying predictability for entities that do business in the State.

1. The lower courts' confusion regarding relatedness traces to *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408 (1984). There, the Court explained that specific jurisdiction exists only "[w]hen a controversy is related to or 'arises out of' a defendant's contacts with the forum." *Id.* at 414. Because the parties had not briefed the issue, however, the Court "decline[d] to reach" the question of "what sort of tie between a cause of action and a defendant's contacts with a forum is necessary to a determination that either connection exists." *Id.* at 415 n.10. The Court has often repeated the "arising out of or related to" requirement in the three decades since *Helicopteros*, but it has never expressly answered the question left open in that case. *See, e.g.*, *J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 881 (2011) (plurality op.); *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 473 n.15 (1985).

Left to their own devices, the lower courts have failed to settle on an answer. Instead, courts have divided into—and have acknowledged that they have divided into—three camps. *See Oldfield* v. *Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1222 n.32 (11th Cir. 2009) (acknowledging that "[o]ther courts have developed" different "approaches for answering the relatedness question" and that "three predominate"); *Dudnikov* v. *Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1078 (10th Cir. 2008) (similar); *Moki Mac River Expeditions* v. *Drugg*, 221 S.W.3d 569, 579-580 (Tex. 2007) (similar); *Shoppers Food Warehouse* v. *Moreno*, 746 A.2d 320, 333-335 (D.C. 2000) (en banc) (similar).

But-For Cause. One group of courts, which includes the Fourth, Ninth, and Tenth Circuits and the highest state courts of Arizona, Massachusetts, and Washington, has concluded that the relatedness requirement is satisfied only if the defendant's forum-state conduct is a "but for" cause of the plaintiff's injury. Thus, these courts hold that a plaintiff cannot establish personal jurisdiction over a defendant unless he "show[s] that he would not have suffered an injury 'but for' [the defendant's] forum-related conduct." *Menken* v. *Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007); *see Consulting Eng'rs Corp.* v. *Geometric Ltd.*, 561 F.3d 273, 278-279 (4th Cir. 2009) (holding that relatedness "requires that the defendant's contacts with the forum state form the basis of the suit"); *Dudnikov*, 514 F.3d at 1079 (10th Cir.) (stating that a defendant's contacts must be "a but-for cause of th[e] action"); *Williams* v. *Lakeview Co.*, 13 P.3d 280, 284-285 (Ariz. 2000) (requiring "a causal nexus between the defendant's * * * activities and the plaintiff's claims"); *Tatro* v. *Manor Care, Inc.*, 625

N.E.2d 549, 553 (Mass. 1994) (adopting "a 'but for' test"); *Shute* v. *Carnival Cruise Lines*, 783 P.2d 78, 81-82 (Wash. 1989) (en banc) ("We adopt the 'but for' test.").[2]

Courts that take this approach have reasoned that "[t]he 'but for' test is consistent with the basic function of the 'arising out of' requirement—it preserves the essential distinction between general and specific jurisdiction." *Shute* v. *Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990), *rev'd on other grounds*, 499 U.S. 585 (1991). In direct contrast with the sliding-scale approach employed below, courts applying but-for causation ask whether "[i]n the absence of [the defendant's forum-related] activity, the * * * [plaintiff's] injury would not have occurred." *Id.* at 386; *see Kuenzle* v. *HTM Sport-Und Freizeitgerate AG*, 102 F.3d 453, 456-457 (10th Cir. 1996) (similar); *cf.* Pet. App. 29a (acknowledging that respondents' "claims would be exactly the same if [Bristol-Myers] had no contact whatsoever with California").

Proximate Cause or Foreseeability. A second group of courts has concluded that the relatedness requirement demands something more than "but for" causation, although they have not settled on the precise standard. Two circuits—the First and the

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[2] Two of these courts—the Tenth Circuit and the Arizona Supreme Court—have declined to decide whether plaintiffs must also show proximate cause to establish specific jurisdiction. *See Dudnikov*, 514 F.3d at 1078-79 ("As between the * * * but-for and proximate causation tests, we have no need to pick sides today."); *Williams*, 13 P.3d at 283-284 ("Even under the more liberal 'but for' test, * * * the plaintiffs here cannot establish the required nexus.").

Sixth—have said that a plaintiff's injuries must be "proximately caused" by the defendant's forum-state contacts. As the First Circuit has explained, "[a] 'but for' requirement * * * has in itself no limiting principle; it literally embraces every event that hindsight can logically identify in the causative chain." *Harlow* v. *Children's Hosp.*, 432 F.3d 50, 61 (1st Cir. 2005) (quoting *Nowak* v. *Tak How Invs., Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996)). Hence, in its view "due process demands something like a 'proximate cause' nexus," which "correlates to foreseeability, a significant component of the jurisdictional inquiry." *Id.* (citations omitted). The Sixth Circuit has agreed, explaining that "more than mere but-for causation is required to support a finding of personal jurisdiction," particularly given that "the Supreme Court has emphasized that only consequences that *proximately* result from a party's contacts with a forum state will give rise to jurisdiction." *Beydoun* v. *Wataniya Rests. Holding, Q.S.C.*, 768 F.3d 499, 507-508 (6th Cir. 2014) (citing *Burger King Corp.*, 471 U.S. at 474).

The Third, Seventh, and Eleventh Circuits, as well as the Oregon Supreme Court, have reached a similar conclusion, although they have refrained from using the term "proximate cause." These courts agree that specific jurisdiction "requires a closer and more direct causal connection than that provided by the but-for test." *O'Connor* v. *Sandy Lane Hotel Co.*, 496 F.3d 312, 323 (3d Cir. 2007); *see, e.g.*, *uBID, Inc.* v. *GoDaddy Grp., Inc.*, 623 F.3d 421, 430 (7th Cir. 2010) (explaining that "[b]ut-for causation would be 'vastly overinclusive,' haling defendants into court in the forum state even if they gained nothing from those contacts"). But they have declined to adopt a

"mechanical" formula for describing the causation standard; rather, each has said that it conducts a "fact-sensitive" inquiry to determine whether the assertion of jurisdiction is "intimate enough to keep * * * personal jurisdiction reasonably foreseeable." *O'Connor*, 496 F.3d at 323; *see uBID*, 623 F.3d at 430 (same); *Oldfield*, 558 F.3d at 1222-23 (11th Cir.) (stating that "the contact must be a 'but-for' cause of the tort" as well as a "a foreseeable consequence" of the defendant's conduct); *Robinson* v. *Harley-Davidson Motor Co.*, 316 P.3d 287, 300 (Or. 2013) (en banc) ("[T]he activity may not be only a but-for cause of the litigation; rather, the nature and quality of the activity must also be such that the litigation is reasonably foreseeable by the defendant."). In all of these courts, too, specific jurisdiction is lacking unless "the plaintiff would not have been injured" had there been no "contacts between the defendant and the forum state." *Nowak*, 94 F.3d at 712.

No Causal Connection. In sharp contrast with these first two sets of courts, the California Supreme Court, the Federal Circuit, and the highest courts of Texas and the District of Columbia have concluded that the relatedness requirement does not demand any causal connection between the defendant's contacts and the plaintiff's injury. Rather, they have held that it is enough if there is some general "relationship" or "connection" between the two—and that such a nexus can be found even if the plaintiff's injury would have occurred had the defendant never made contact with the forum.

The California Supreme Court articulated this approach quite clearly in the decision below. It

explained that, under its sliding-scale test, the defendant's "activities in the forum state need not be either the proximate cause or the 'but for' cause of the plaintiff's injuries." Pet App. 22a. It required much less, describing the pertinent question as whether "there is a substantial nexus or connection between the defendant's forum activities and the plaintiff's claim." *Id.* at 21a (quoting *Snowney* v. *Harrah's Entm't, Inc.*, 112 P.3d 28, 36-37 (Cal. 2005)).

The Federal Circuit, the Texas Supreme Court, and the District of Columbia Court of Appeals have adopted similar tests. The Federal Circuit has said that it considers whether the defendant's conduct "relate[s] in some material way" to the plaintiff's suit—a standard it says is "far more permissive than either the 'proximate cause' or the 'but for' analyses." *Avocent Huntsville Corp.* v. *Aten Int'l Co.*, 552 F.3d 1324, 1336-37 (Fed. Cir. 2008). The Texas Supreme Court has likewise said that its "standard does not require proof that the plaintiff would have no claim 'but for' the contacts, or that the contacts were a 'proximate cause' of the liability." *TV Azteca* v. *Ruiz*, 490 S.W.3d 29, 52-53 (Tex. 2016). And the D.C. Court of Appeals has rejected "strict causation-based tests" in favor of a test requiring only "a 'discernible relationship' between [the plaintiff's] claim and the" defendant's conduct. *Shoppers Food Warehouse*, 746 A.2d at 333, 336 (citation omitted).

Courts on every side of the split recognize the significance of the choice between these three standards. Nearly every court that has adopted a but-for or proximate-causation standard has expressly rejected the sliding scale, calling it "formless,"

O'Connor, 496 F.3d at 322; a way of "inappropriately blur[ring] the distinction between specific and general personal jurisdiction," *Dudnikov*, 514 F.3d at 1078; or "a freewheeling totality-of-the-circumstances test," *Robinson*, 316 P.3d at 291 (citation omitted). Courts that have adopted non-causal tests have, conversely, criticized the causation standards as "overly mechanical," *Vons*, 926 P.2d at 468-469, and insufficiently "permissive," *Avocent*, 552 F.3d at 1337.

2. These different tests have produced divergent results in suits materially indistinguishable from this one: that is, product-liability claims against drug manufacturers based on injuries from a drug that was not manufactured, prescribed, or ingested in the forum State. Both the First and Fourth Circuits have dismissed such claims for lack of personal jurisdiction; only California's non-causative, sliding-scale approach leaves defendants subject to personal jurisdiction as the price of generally doing business in California.

Consider the First Circuit's decision in *Glater v. Eli Lilly & Co.*, 744 F.2d 213, 214 (1st Cir. 1984). In that case, as here, the plaintiff sued a drug manufacturer, Eli Lilly, for injuries alleged caused by a drug it manufactured. Lilly advertised that drug in the forum State, employed sales representatives in the forum State, sold the drug through wholesalers in the forum State, and marketed the drug nationwide. *Id.* at 214-215. Nonetheless, the First Circuit concluded that these generalized contacts could not establish personal jurisdiction. The plaintiff's injuries, it explained, had been "caused" in another State, where the drug had been "purchased and

consumed"; accordingly, her cause of action "did not arise from Lilly's [forum-state] activities." *Id.* at 216. Exercising jurisdiction in this circumstance, the court concluded, would "comport[] with neither logic nor fairness," as it would allow any "nonresident injured out of state by a drug sold and consumed out of state" to bring suit against Lilly in the forum. *Id.* at 216 n.4

The Fourth Circuit reached a similar conclusion in *Ratliff* v. *Cooper Laboratories, Inc.*, 444 F.2d 745 (4th Cir. 1971). In that case, a plaintiff sued two manufacturers for injuries caused by a drug that was "neither manufactured nor consumed in" the forum State. *Id.* at 746. The defendants, like Bristol-Myers, conducted a range of activities in the forum State, including advertising, solicitation, and employing several sales representatives. *Id.* Yet because "the causes of action arose outside the forum and were unconnected with the defendant's activities" in the forum, the court concluded, there was no "rational nexus" to support jurisdiction. *Id.* at 747-748.

The California Supreme Court reached a different conclusion. Unlike the First and Fourth Circuits, the court dismissed as irrelevant the fact that respondents (according to their own allegations) did not purchase Plavix in California, did not obtain Plavix from a California distributor, and did not learn of Plavix through California-based advertising. *See* Pet App. 33a-34a (acknowledging that the respondents "did not suffer any Plavix-related injuries in the state"); *id.* at 47a-48a (Werdegar, J., dissenting). Indeed, the court did not contest that respondents' "claims would be exactly the same if [Bristol-Myers]

had no contact whatsoever with California." *Id.* at 29a. Nonetheless, the California Supreme Court found that personal jurisdiction over Bristol-Myers existed because it ultimately distributed Plavix to respondents "as part of a common nationwide course of distribution" that also included California residents. *Id.* at 28a. The court reasoned that such nationwide distribution meant that "the nonresident plaintiffs' claims bear a *substantial connection* to [Bristol-Myers's] contacts in California." *Id.* (emphasis added).

These claims would have been dismissed in any federal circuit or state court that applies a causation standard—indeed, materially similar claims *were* dismissed in circuits that do. And the California Supreme Court acknowledged as much: Confronted with the observation that its decision was irreconcilable with *Glater*, it responded that the First Circuit's decision differed because that court does not apply a "sliding scale approach to specific jurisdiction." Pet App. 32a; *see also id.* at 62a-64a (Werdegar, J., dissenting) (noting conflict with both *Glater* and *Ratliff*). That is right, and it underscores the need for this Court's review. Disagreements over the test for relatedness, and not differences in facts, are driving differences in outcomes among the lower courts.

3. Permitting this division to persist is especially intolerable in California, where the state Supreme Court and the relevant federal circuit have adopted divergent jurisdictional tests. As noted above, "the Ninth Circuit follows the 'but for' test" in applying the relatedness prong. *Menken*, 503 F.3d at 1058 (citation omitted). Under that test, it has repeatedly

rejected assertions of personal jurisdiction premised on in-state marketing and sales activities that are not a cause of the plaintiff's injuries. *See, e.g.*, *Young* v. *Actions Semiconductor Co.*, 386 F. App'x 623, 627 (9th Cir. 2010) (finding that the court lacked personal jurisdiction over a securities claim, notwithstanding that the defendant had "market[ed] and s[old] its stock in connection with [its] IPO" in California, because the plaintiffs "would have [had] the same claims * * * even if" the California-based sales and marketing had not occurred); *Glencore Grain Rotterdam B.V.* v. *Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1119 (9th Cir. 2002) (similar). A federal district court in California would thus have readily dismissed respondents' claims because they would have "be[en] exactly the same if [Bristol-Myers] had no contact whatsoever with California." Pet. App. 29a.

That cannot be allowed. If jurisdictional outcomes vary based on whether a claim is filed in state or federal court, then plaintiffs will have every reason to—and will—find ways to shop their claims to the more hospitable courthouse. Lawyers can do that with ease: one well-worn method is to add an extra defendant who destroys complete diversity, as may have occurred in this case. *See* Pet App. 59a (Werdegar, J., dissenting) ("Why plaintiffs sued McKesson as well as [Bristol-Myers] is not obvious * * * but at no point have [respondents] argued McKesson bore any responsibility in providing them with Plavix."). This Court has previously recognized that the costs of such a circuit-state conflict are particularly high where the conflict involves California, "the State with the largest population"; in this circumstance, it has said, there is "substantial reason for granting

certiorari under this Court's Rule 10" to eliminate the risk of "[f]orum shopping." *Yee* v. *City of Escondido*, 503 U.S. 519, 538 (1992). The writ should be granted to settle the longstanding split on relatedness generally and to resolve the specific enticement to forum-shop presented by the divergent approaches taken by California and the Ninth Circuit.

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S SPECIFIC-JURISDICTION CASE LAW AND RENDERS *DAIMLER* A DEAD LETTER FOR NATIONAL CORPORATIONS DOING BUSINESS IN CALIFORNIA.

The California Supreme Court's sliding-scale approach to relatedness and its application to respondents' claims cannot be squared with this Court's specific-jurisdiction case law. And it retains the old "continuous and systematic" standard for general jurisdiction by labeling it specific jurisdiction instead. That renders *Daimler* a dead letter for any company that does substantial business in California or markets its products nationally.

A. The California Supreme Court's Decision Conflicts With *Goodyear* And This Court's Past Pronouncements Regarding Relatedness.

1. The California Supreme Court's sliding-scale approach and its application to respondents' claims contradict this Court's past pronouncements regarding relatedness. Although the Court has phrased the requirement differently in different cases, it has always required a causal connection between the plaintiff's claims and the defendant's forum activities.

Start with the Court's "pathmarking," *Goodyear*, 564 U.S. at 919, decision in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945). The relatedness test was satisfied because of a causal link between the defendant's in-state activities and the plaintiff's claims; "[t]he obligation which [was] here sued upon arose out of th[e] [defendant's] very activities" in the State. *Id.* at 320. That circumstance is in sharp contrast with respondents' claims, which, as the majority below conceded, do not arise out of Bristol-Myers's very activities in California. *See* Pet. App. 30a.

The Court in *Goodyear* similarly observed that specific jurisdiction "depends on an 'affiliatio[n] between the forum and the underlying controversy,' principally, activity or an occurrence that *takes place in the forum State* and is therefore subject to the State's regulations." 564 U.S. at 919 (brackets in original; emphasis added; citation omitted). Not just any activity in the forum State will do. Specific jurisdiction is proper only if *"that activity gave rise to the episode-in-suit."* *Id.* at 923 (emphasis in original). And contrary to the majority below, *Goodyear* requires that link even where the defendant has "continuous and systematic" contacts with the forum. *Id.* (citation omitted); *cf.* Pet. App. 30a (rejecting the argument that Bristol-Myers's "forum contacts must bear some substantive legal relevance to [respondents'] claims" because Bristol-Myers's "contacts with California are substantial").

Finally, in *Walden* v. *Fiore*, 134 S. Ct. 1115 (2014), the Court explained that "[f]or a State to exercise jurisdiction consistent with due process, the defendant's *suit-related conduct* must create a *substantial*

connection with the forum State." *Id.* at 1121 (emphases added). Because the California Supreme Court could not point to any "suit-related conduct" by Bristol-Myers bridging the divide between respondents' claims and the company's contacts with California, its analysis instead treated as relevant general business conduct in California and conduct related to the claims of California-resident plaintiffs. Elevating such non-suit-related conduct to prominence conflicts with *Walden*.

This Court has applied these principles throughout its specific-jurisdiction case law. Each time that the Court has found the exercise of specific jurisdiction over a defendant consistent with due process, there was some causal link between the defendant's acts in the forum and the cause of action that the plaintiff asserted. *See, e.g.*, *Burger King*, 471 U.S. at 479-480 (Florida court could exercise specific jurisdiction over defendant because franchise dispute "grew directly out of" a contract formed in Florida); *Calder* v. *Jones*, 465 U.S. 783, 789 (1984) (California court could exercise specific jurisdiction over defendants because defendants' tortious actions "were expressly aimed" at California); *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 776-777 (1984) (New Hampshire could exercise specific jurisdiction over defendant because defendant's sale of magazines in New Hampshire injured plaintiff's reputation there); *McGee* v. *Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957) (California could exercise specific jurisdiction over defendant because defendant delivered plaintiff's life-insurance contract in California and plaintiff's suit was based on the contract); *see also* Pet. App. 53a-54a (Werdegar, J., dissenting) ("Of the post-*International Shoe* decisions in which the high court actually found a

factual basis for specific jurisdiction, each featured a direct link between forum activities and the litigation."). The California Supreme Court's forthrightly non-causal test conflicts with these cases.

The majority below at times suggested that there was a sufficient connection between respondents' claims and Bristol-Myers's California activities because the company supposedly had a national Plavix marketing strategy. *See* Pet. App. 33a, 35a. That is plainly incorrect. A contact has "no jurisdictional significance" if it would result in jurisdiction "in all 50 States and the District of Columbia * * * simultaneously." *Rush* v. *Savchuk*, 444 U.S. 320, 330 (1980). Under the majority's approach, the allegation of a national marketing strategy would subject a defendant to specific jurisdiction not just in California, but also in North Dakota, and Kansas, and every other state. This Court has sensibly forbidden such a high-level view of the relatedness requirement. *See id.*

2. In addition to conflicting with the general principles of relatedness in this Court's cases, the California Supreme Court's decision conflicts with *Goodyear* at a granular level. *Goodyear*, like this case, was a product-defect suit. 564 U.S. at 918. The plaintiffs claimed that a defective tire manufactured in Turkey and installed on a French bus caused the bus to overturn. *Id.* at 920. Plaintiffs alleged negligence in the tire's "design, construction, testing, and inspection," and sued the defendants, foreign subsidiaries of The Goodyear Tire & Rubber Company, in North Carolina state court. *Id.* at 918, 920 (citation omitted).

Although the Court focused primarily on general jurisdiction, it led off with a discussion of—and holding on—specific jurisdiction. *Id.* at 919. The Court explained that "[b]ecause the episode-in-suit, the bus accident, occurred in France, and the tire alleged to have caused the accident was manufactured and sold abroad, North Carolina courts lacked specific jurisdiction to adjudicate the controversy." *Id.* *Goodyear* thus states a simple rule for specific jurisdiction in a product-defect case: If the plaintiff is not injured in the forum and the allegedly defective product was not manufactured or sold in the forum, then there is no specific jurisdiction in the forum.

The majority below correctly described *Goodyear*'s specific-jurisdiction holding in the course of its general-jurisdiction discussion. Pet. App. 13a ("The high court first noted that North Carolina courts lacked specific jurisdiction to adjudicate the controversy because the accident had occurred abroad and the allegedly defective tire had been manufactured and sold abroad."). But the majority then never applied *Goodyear*'s specific-jurisdiction rule; it inexplicably never cited *Goodyear* in its section on specific jurisdiction. *Id.* at 20a-44a.

The dissent recognized that *Goodyear* controlled both the general and specific jurisdiction analyses. Pet. App. 53a (Werdegar, J., dissenting) (recognizing that, in *Goodyear*, "[n]one of the injury-causing events having occurred in the forum state, the basis for specific jurisdiction was lacking"). This Court should, too. Because respondents were not injured by Plavix in California and the Plavix they ingested was neither manufactured nor sold in California,

Bristol-Myers is not subject to specific jurisdiction on respondents' claims in California.[3]

B. The California Supreme Court's Decision Guts *Daimler* For National Consumer Companies.

The California Supreme Court's sliding-scale approach does more than just contravene this Court's specific-jurisdiction precedent. It also guts *Daimler*'s limitations on general jurisdiction by resurrecting the old "continuous and systematic contacts" test for general jurisdiction under a new specific-jurisdiction label.

1. *Daimler* reaffirmed the essential distinction between general and specific jurisdiction. 134 S. Ct. at 754. And it made clear that the test for general jurisdiction is demanding. For there to be general jurisdiction over a corporation in a State, it must be

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[3] None of this is to say that a plaintiff suffering injury in the forum State is, by itself, sufficient to establish specific jurisdiction over a defendant. This Court has held that "mere injury to a forum resident is not a sufficient connection to the forum" and that "an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State." *Walden*, 134 S. Ct. at 1125. And lower courts have held that even where a product injures a plaintiff in the forum, there is no specific jurisdiction over the product's manufacturer if the product entered the State through forces outside the manufacturer's control. *See, e.g.*, *D'Jamoos* v. *Pilatus Aircraft Ltd.*, 566 F.3d 94, 106 (3d Cir. 2009); *Kuenzle*, 102 F.3d at 457; *Hinrichs* v. *Gen. Motors of Can., Ltd.*, __ So. 3d __, No. 1140711, 2016 WL 3461177, at *27 (Ala. June 24, 2016) (per curiam). But *Goodyear* at least marks specific jurisdiction's outer bounds: If there is no injury in the forum and no manufacture or sale of the injury-causing product in the forum, there can be no specific jurisdiction in the forum.

"essentially at home" there—not merely have continuous or systematic contacts there. *Id.* at 754, 760 (citation omitted). *Daimler* thus "raised the bar" for general jurisdiction and "emphasized that it should not lightly be found." *Kipp* v. *Ski Enter. Corp. of Wis., Inc.*, 783 F.3d 695, 698 (7th Cir. 2015).

The California Supreme Court below purported to follow *Daimler*'s stringent requirements for general jurisdiction. Both the majority and dissent agreed that Bristol-Myers was not essentially at home in California. *See* Pet. App. 16a-19a (majority); *id.* at 46a (dissent). But the majority effectively reimposed the old "doing business" test for general jurisdiction by calling it specific jurisdiction. It held that because Bristol-Myers distributed Plavix in California (to pharmacies other than respondents'), marketed Plavix in California (to people other than respondents), and researches and develops drugs in California (but not Plavix), a California court can exercise jurisdiction over Bristol-Myers to adjudicate Plavix-based claims that—in the majority's words—have no "substantive legal relevance" to any of these forum activities. *Id.* at 30a. But to exercise jurisdiction over a defendant on claims that have no substantive legal relevance to the forum is the definition of *general* jurisdiction. *See Walden*, 134 S. Ct. at 1121 n.6; *Daimler*, 134 S. Ct. at 751; *Goodyear*, 564 U.S. at 919.

Daimler proves as much. The Court offered the example of a California product-defect suit involving a Daimler-manufactured vehicle that overturned in Poland and injured a Polish driver and passenger. 134 S. Ct. at 751. The Court explained that the question in that case would be one of general juris-

diction; the suit could be maintained in California only if there were general jurisdiction over Daimler there. *Id.* at 754 n.5.

Under the decision below, however, *Daimler*'s Polish product suit could be brought in California. After all, Daimler there—like Bristol-Myers here—had extensive product sales in California and had several facilities that sold and promoted its brand. *See id.* at 752 (Daimler was the largest supplier of luxury vehicles to the California market and had a regional office, a classic-car center, and a vehicle-preparation center there). Given these extensive contacts, the sliding scale would not require a particularly close connection between the Polish plaintiffs' claims and Daimler's California contacts. *See* Pet. App. 22a. The majority below would therefore likely deem the Polish plaintiffs' claims connected to Daimler's sale, promotion, and preparation of allegedly defective vehicles in California and allow specific jurisdiction over Daimler on the plaintiffs' claims. That result turns *Daimler* on its head.

The majority claimed that its specific-jurisdiction holding was not equivalent to general jurisdiction because it was not subjecting Bristol-Myers to *all* possible claims in California. Pet. App. 34a-35a. But under the majority's view, an allegedly uniform, nationwide marketing strategy would be a contact with all 50 States that would subject Bristol-Myers to specific jurisdiction in each of them on all related claims from anywhere in the Nation. *But see Rush*, 444 U.S. at 330 (finding irrelevant a contact that would lead to personal jurisdiction in all 50 States simultaneously). So, Bristol-Myers is at the very least subject to specific jurisdiction in California on

all product-defect claims—the type of suit most likely to be brought against a manufacturer. And Bristol-Myers would be subject to specific jurisdiction on other claims in California, too. A disgruntled Bristol-Myers employee in Maine could sue for wrongful termination in California because Bristol-Myers employs workers in both California and Maine—particularly if the Maine employee claimed his termination was connected to a uniform Bristol-Myers human-resources policy. *See* Pet. App. 77a (Werdegar, J., dissenting) (proposing a similar hypothetical). Or a Bristol-Myers landlord in Nebraska could sue in California for back rent because Bristol-Myers also leases facilities in California—particularly if the Nebraska landlord claimed that the failure to pay was because of a centralized Bristol-Myers accounts-payable system. *See id.* If this is not general jurisdiction, then it is so close as to be functionally indistinguishable for national consumer companies like Bristol-Myers. *See id.*

III. THE QUESTION PRESENTED IS IMPORTANT AND THIS CASE IS AN IDEAL VEHICLE TO ANSWER IT.

The relatedness question is an important one. This Court once granted review on the issue before declining to decide it, and the need for resolution has grown markedly since then. Practically speaking, leaving the decision below in place will result in California state courts becoming even more of a destination for plaintiffs looking to shop suits to friendlier forums. And this case is an ideal vehicle to address the relatedness question. The Court should step in to do so.

1. The Court has recognized the certworthiness of the relatedness question before. The Court granted review to determine the requisite causal connection for establishing relatedness in *Carnival Cruise Lines, Inc.* v. *Shute*, 499 U.S. 585, 589-590 (1991), but ultimately decided the case on other, non-constitutional grounds. *See Tamburo* v. *Dworkin*, 601 F.3d 693, 708 (7th Cir. 2010) (recognizing that the Court granted review of the relatedness question in *Carnival* but did not reach it); *Akro Corp.* v. *Luker*, 45 F.3d 1541, 1547 (Fed. Cir. 1995) (same).

Not only has the split become far deeper and more entrenched since 1991, but specific jurisdiction has become a much more hotly contested issue in recent years. *Goodyear* and *Daimler* made clear that companies are not subject to general jurisdiction in every State just because they have substantial operations there. *See, e.g.*, William R. Hanlon & Richard M. Wyner, Mealey's Litigation Report: Asbestos, Daimler *Turns Two: Personal Jurisdiction Over Out-Of-State Mass Tort Defendants In The Wake Of* Daimler AG *v.* Bauman 1 (Apr. 13, 2016) ("Before 2014, most courts and litigants assumed that corporations are subject to general personal jurisdiction * * * in every state where they had continuous and systematic business contacts. That meant that large corporations could be sued in essentially any state on any claim."), https://goo.gl/Orp1fo. Since then, where companies are subject to specific jurisdiction—and the proper relatedness standard for such jurisdiction—has become a central issue for companies operating across state lines. The time has come for the Court to take up the question it did not resolve in *Carnival*.

2. Review is also practically important for corporate defendants. Left unchecked, the California Supreme Court's slippery sliding scale will rob corporate defendants of the predictability that the Due Process Clause is supposed to provide them. *See Burger King*, 471 U.S. at 472 ("[T]he Due Process Clause 'gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" (quoting *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980))). Businesses will be subject to suit in California state court anytime—in some trial judge's view—a defendant's not-causally-related forum conduct can be connected at a high level or in some abstract way to a plaintiff's claims. Short of pulling out of the California market altogether, a business can never know whether an in-state facility or activity will be the hook that allows the California Superior Court to exercise jurisdiction over a nationwide mass action. *Cf.* Pet. App. 33a (for Bristol-Myers to eliminate the risk of being haled into California courts on nationwide Plavix claims, it would need to "sever[] its connection with the state"); *id.* at 83a (Werdegar, J., dissenting) (under the majority's decision, "predictability has been severely impaired, as the company's potential liabilities cannot be forecast from its state activities").

The Court's review would moreover stop courts from avoiding *Daimler*'s restrictions on general jurisdiction through a specific-jurisdiction label. *Daimler*'s clear rule for where a corporation is "at home" increased certainty and reduced jurisdictional-discovery costs for national companies. *See Daimler*, 134 S. Ct. at 760, 762 n.20. If lower courts can revive general jurisdiction through a loose relatedness requirement like California's, *Daimler*'s predictability gains will be wiped out.

The California Supreme Court's sliding-scale approach is particularly harmful given the size and importance of the California market. California has the largest economy in the United States,[4] and the sixth largest in the world, *California Economy Surges to No. 6 in Global Rankings*, Sacramento Bee (June 14, 2016), https://goo.gl/3QqmPc. The practical reality is that every sizable national company likely has significant California connections. *See* Pet. App. 84a (Werdegar, J., dissenting) ("As California holds a substantial portion of the United States population, any company selling a product or service nationwide, regardless of where it is incorporated or headquartered, is likely to do a substantial part of its business in California."); *cf. Daimler*, 134 S. Ct. at 752 (California accounted for 2.4% of Daimler's worldwide sales). That, in turn, means that California state courts will not require much if any connection between the company's California activities and a plaintiff's non-California claims to exercise jurisdic-

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[4] Bureau of Economic Analysis, U.S. Dep't of Commerce, *Gross Domestic Product by State: First Quarter 2016* tbl.3 (July 27, 2016), https://goo.gl/p38627.

tion over the company. *See* Pet. App. 22a (requiring an inverse relationship between California contacts and connection with a plaintiff's claims under the sliding-scale approach). This Court has refused to allow California's outsized role in the Nation's economy to warp jurisdictional rules before. *See Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010) (rejecting a plurality-of-contacts approach to determining a corporation's principal place of business because, under such a test, "nearly every national retailer—no matter how far flung its operations—will be deemed a citizen of California for diversity purposes") (citation omitted). It should refuse to do so again here.

3. The California Supreme Court's capacious understanding of specific jurisdiction will also allow plaintiffs to shop claims with no causal connection to a defendant's California activities to what their counsel view as the more plaintiff-friendly California courts. A survey of all pharmaceutical product-liability cases in the Los Angeles and San Francisco Superior Courts found that non-California plaintiffs predominated in 85.9% of complaints, that 89.9% of plaintiffs overall were from outside California, and that more than 67% of complaints did not have a single California plaintiff in the caption. Ryan Tacher, Civil Justice Ass'n of Cal., *Are Out-Of-State Plaintiffs Clogging California Courts?* (Sept. 2016), https://goo.gl/blEAyU. Plaintiffs should not be allowed to take their case to the most hospitable forum they can think of. *Cf. Walden*, 134 S. Ct. at 1122 ("Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties.").

4. This case is an ideal vehicle to clarify the relatedness standard and restore predictability regarding where businesses are subject to specific jurisdiction. The majority below explicitly noted that there are "no material factual conflicts nor any dispute over any factual findings in the superior court." Pet. App. 8a-9a. Moreover, the purely legal question of whether specific-jurisdiction's relatedness prong requires a causal connection between the plaintiff's claims and the defendant's forum activities is outcome-determinative. The majority below did not disagree that respondents' "claims would be exactly the same if [Bristol-Myers] had no contact whatsoever with California," *id.* at 29a, and respondents have never argued that they could satisfy the causal relatedness tests employed in the First, Third, Fourth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits or in the Massachusetts, Washington, Oregon, and Arizona high courts. And the legal issues have been ventilated in the extensive majority and dissenting opinions below that were informed by extensive *amicus* participation in support of both sides. *See id.* at 87a-88a.

In sum, there is no prudential reason to allow the relatedness split to linger for longer than it already has. The Court should grant the writ to reaffirm *Daimler* and make explicit the causal-relationship relatedness requirement from its past cases.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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OCTOBER 2016

APPENDIX

APPENDIX A

IN THE SUPREME COURT
OF CALIFORNIA

No. S221038

Ct.App. 1/2 A140035

San Francisco County
Super. Ct. JCCP No. 4748

BRISTOL-MYERS SQUIBB COMPANY

Petitioner,

v.

THE SUPERIOR COURT OF
SAN FRANCISCO COUNTY,

Respondent;

BRACY ANDERSON et al.,

Real Parties in Interest.

Bristol-Myers Squibb Company (BMS), a pharmaceutical manufacturer, conducts significant business and research activities in California but is neither incorporated nor headquartered here. In March 2012, eight separate amended complaints were filed in San Francisco Superior Court by or on behalf of 678 individuals, consisting of 86 California residents and 592 nonresidents, all of whom allegedly were prescribed and ingested Plavix, a drug created and marketed by BMS, and as a result

suffered adverse consequences. BMS contests the propriety of a California court's exercising personal jurisdiction over it for purposes of adjudicating the nonresident plaintiffs' claims.

Under the particular circumstances present here, we conclude personal jurisdiction is authorized by Code of Civil Procedure section 410.10, which extends jurisdiction to the maximum extent permissible under the United States Constitution. Although BMS's business contacts in California are insufficient to invoke general jurisdiction, which permits the exercise of jurisdiction over a defendant regardless of the subject of the litigation, we conclude the company's California activities are sufficiently related to the nonresident plaintiffs' suits to support the invocation of specific jurisdiction, under which personal jurisdiction is limited to specific litigation related to the defendant's state contacts. (See *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 446 (*Vons*).)

Accordingly, we affirm the judgment of the Court of Appeal, which held that BMS was subject to the personal jurisdiction of the California courts on the basis of specific jurisdiction.

I. Factual and Procedural Background

BMS manufactures Plavix, a prescription drug used to inhibit blood clotting. In the eight amended complaints filed in the superior court, 86 California residents and 592 residents of 33 other states sued BMS and McKesson Corporation, a pharmaceutical distributor headquartered in California, for injuries

allegedly arising out of their use of Plavix.[1] The state in which the largest number of plaintiffs reside is Texas, with 92 plaintiffs, followed by the 86 California plaintiffs, followed by Ohio, with 71 plaintiffs.

Each amended complaint contains the same 13 causes of action: strict products liability (based on both design defect and manufacturing defect); negligence; breach of implied warranty; breach of express warranty; deceit by concealment (Civ. Code, §§ 1709, 1710); negligent misrepresentation; fraud by concealment; unfair competition (Bus. & Prof. Code, § 17200); false or misleading advertising (Bus. & Prof. Code, § 17500); injunctive relief for false or misleading advertising (Civ. Code, § 1750 et. seq.); wrongful death; and loss of consortium.

The plaintiffs allege that defendants engaged in "negligent and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distribution, labeling, and/or sale of Plavix." According to the complaints, defendants allegedly promoted the drug to consumers and physicians by falsely representing it "as providing greater cardiovascular benefits, while being safer and easier on a person's stomach than aspirin," but defendants knew those claims were untrue because ingesting Plavix allegedly involves "the risk of suffering a heart attack, stroke,

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[1] A ninth case, filed in Santa Clara Superior Court by the County of Santa Clara against defendants was also joined with the other eight cases and assigned to a coordination trial judge of the San Francisco Superior Court. The complaint filed in that matter is not in the record before us nor is it a subject of dispute among the parties as to matters of personal jurisdiction.

internal bleeding, blood disorder or death [which] far outweighs any potential benefit."

Plaintiffs allege different injuries, and sometimes combinations of injuries, which they claim were caused from the ingestion of Plavix. These injuries include bleeding, bleeding ulcers, gastrointestinal bleeding, cerebral bleeding, rectal bleeding, heart attack, stroke, hemorrhagic stroke, subdural hematoma, thrombotic thrombocytopenic purpura, and death. The complaints allege that 18 of the 678 individuals whose injuries underlay these actions died as the result of ingesting Plavix.

The actions were assigned as a coordinated matter to a judge of the San Francisco Superior Court.

BMS moved to quash service of summons on the ground that the court lacked personal jurisdiction over it to adjudicate the claims of the 592 nonresident plaintiffs, who are real parties in interest in this proceeding (hereafter referred to as "the nonresident plaintiffs"). BMS noted that the complaints' allegations do not include any factual claims that the nonresident plaintiffs' injuries occurred in California or that they had been treated for their injuries in California.

In declarations supporting the motion, BMS officers stated that the company is incorporated in Delaware, is headquartered in New York City, and maintains substantial operations in New Jersey, including major research and development campuses. BMS has approximately 6,475 employees in the New York and New Jersey area, comprising 51 percent of its United States workforce.

BMS further asserted that its research and development of Plavix did not take place in California, nor was any work related to its labeling, packaging, regulatory approval, or its advertising or marketing strategy performed by any of its employees in this state. BMS has never manufactured Plavix in California. These activities were instead performed or directed from the company's New York headquarters and New Jersey operating facilities. According to data provided by the company, in a 12-month period ending in July 2012, BMS's sales revenue from Plavix sales in California constituted 1.1 percent of the company's total nationwide sales revenue of all of its products.

But the declarations submitted by BMS also disclosed that the company maintains substantial operations in California, including five offices that are primarily research and laboratory facilities employing approximately 164 people. BMS additionally employs approximately 250 sales representatives in the state. BMS also has a small office in Sacramento to represent and advocate for the company in state government affairs.

In opposition to the motion to quash, plaintiffs submitted materials showing that BMS sold almost 187 million Plavix pills to distributors and wholesalers in California in 2006-2012, with sales revenue of almost $918 million. Furthermore, plaintiffs noted that BMS maintains a registered agent for service of process in California.

The superior court denied BMS's motion to quash service of summons, concluding the company's sales and other activities in California were sufficiently

extensive to subject it to the general jurisdiction of the state courts.

BMS petitioned the Court of Appeal for a writ of mandate, naming the nonresident plaintiffs as real parties in interest. The Court of Appeal first summarily denied the petition on the same day as the United States Supreme Court announced its decision in *Daimler AG v. Bauman* (2014) 571 U.S. ___ [134 S.Ct. 746] (*Daimler*), which clarified limits on general jurisdiction. We granted review and transferred the matter back to the Court of Appeal for issuance of an order to show cause in light of *Daimler*. After briefing and oral argument, the Court of Appeal again denied the writ, this time by an opinion holding that BMS's activities in California were insufficient to subject it to general jurisdiction in the state, but that, given the nature of the action and BMS's activities in California, our courts may properly exercise specific jurisdiction over BMS in this matter.

We granted BMS's petition for review, requesting briefing on both types of personal jurisdiction, general and specific.

II. Discussion

Under Code of Civil Procedure section 410.10, California courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." "The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts." (*Walden v. Fiore* (2014) 571 U.S. ___, ___ [134 S.Ct. 1115, 1121].) "Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident

defendant — not the convenience of plaintiffs or third parties." (*Id.* at p. ___ [134 S.Ct. at p. 1122].)

Under the federal Constitution, a court exercising jurisdiction over a nonresident defendant comports with due process as long as the defendant "has such minimum contacts with the state that the assertion of jurisdiction does not violate ' "traditional notions of fair play and substantial justice." ' " (*Vons, supra*, 14 Cal.4th at p. 444, quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 (*International Shoe*).) Plaintiffs bear the initial burden of proving state contacts sufficient to justify the exercise of jurisdiction. (*Vons*, *supra*, 14 Cal.4th at p. 449.) The jurisdiction of courts to render judgment against a person is historically grounded in the courts' power over the person, originally premised on a person's presence within the territorial jurisdiction of the court. (*International Shoe*, *supra*, 326 U.S. at p. 316.) Because "the corporate personality is a fiction," however, a corporation's " 'presence' " in a state must be determined by the activities of its agents (*ibid.*), and the demands of due process in this context "may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there." (*Id.* at p. 317.)

In some cases, the corporation's continuous activities within the state have been found "so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." (*International Shoe, supra*, 326 U.S. at p. 318.) This has become known as "general," or "all-purpose,"

jurisdiction. (*Daimler*, *supra*, 571 U.S. ___ [134 S.Ct. 746, 751, 754].)

In other circumstances, where the company's activities in the forum state are more limited, general jurisdiction may be lacking but jurisdiction may nonetheless be proper because the litigation is derived from obligations that "arise out of or are connected with the [company's] activities within the state." (*International Shoe*, *supra*, 326 U.S. at pp. 319, 320.) This has become known as "specific," or "case-linked," jurisdiction. (*Daimler*, *supra*, 571 U.S. at p. ___ [134 S.Ct. at pp. 751, 754]; *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 564 U.S. ___, ___ [131 S.Ct. 2846, 2851] (*Goodyear*).)

"When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. [Citation.] Once facts showing minimum contacts with the forum state are established, however, it becomes the defendant's burden to demonstrate that the exercise of jurisdiction would be unreasonable. [Citation.] When there is conflicting evidence, the trial court's factual determinations are not disturbed on appeal if supported by substantial evidence. [Citation.] When no conflict in the evidence exists, however, the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record." (*Vons*, *supra*, 14 Cal.4th at p. 449.)

Although the briefing and record at the trial court did not have the benefit of being informed by the high court's decision in *Daimler*, there appears to be no material factual conflicts nor any dispute over any

factual findings in the superior court. We, therefore, consider the possible exercise of each type of jurisdiction as a matter of law and on the undisputed facts.

A. General Jurisdiction

1. *Case law concerning general jurisdiction*

The landmark 1945 decision of the United States Supreme Court in *International Shoe*, *supra*, 326 U.S. 310, serves as the starting point of modern jurisprudence concerning general jurisdiction. Although the high court resolved that case under a specific jurisdiction theory, it also described general jurisdiction as embracing "instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." (*International Shoe*, *supra*, 326 U.S. at p. 318.) Subsequent to *International Shoe*, the high court has addressed the concept of general jurisdiction in only a handful of cases.

In *Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437 (*Perkins*), the high court concluded that a company that had temporarily ceased mining operations abroad and had relocated its limited corporate activities to Ohio could be sued in Ohio on a cause of action unrelated to its Ohio corporate activities. (*Id.* at pp. 447-448.) In *Perkins*, because of the wartime Japanese occupation of the Philippine Islands, a Philippine corporation had ceased mining operations on all its properties there, but it maintained limited corporate activities through its president and principal shareholder who had relocated to Ohio. A shareholder then sued the

company in Ohio for unpaid dividends and for its failure to issue her certificates for her shares of stock. The high court applied the standard set forth in *International Shoe* and concluded that the president's business activities through his home in Ohio reflected "a continuous and systematic supervision of the necessarily limited wartime activities of the company." (*Perkins*, *supra*, 342 U.S. at p. 448.)

The high court in *Perkins* explained that after the company's mining operations ceased due to the occupation, the president of the company returned to his residence in Ohio. He kept a home office there, maintaining the company's files. From that office he "carried on correspondence relating to the business of the company and to its employees," drew and distributed salary checks on behalf of the company, used and maintained two active Ohio bank accounts carrying substantial balances of the company's funds, retained another Ohio bank to act as transfer agent for the stock of the company, held several directors' meetings in his home or home office, "supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines" from his Ohio home office, and dispatched funds from Ohio to cover purchases of machinery for such rehabilitation. (*Perkins*, *supra*, 342 U.S. at p. 448.)

The high court observed that although "no mining properties in Ohio were owned or operated by the company, many of its wartime activities were directed from Ohio and were being given the personal attention of its president in that State at the time he was served with summons." (*Perkins*, *supra*, 342 U.S. at p. 448.) Thus, the company's

wartime operations had been effectively shifted almost entirely to the president's home office in Ohio, which meant that "under the circumstances above recited, it would not violate federal due process for Ohio either to take or decline jurisdiction of the corporation in this proceeding." (*Ibid.*) In other words, the requirements for the exercise of general jurisdiction were met.

In *Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408 (*Helicopteros*), the high court concluded that general jurisdiction was not supported in the forum state when the defendant corporation was based abroad, had no physical presence in the forum state other than limited business purchases and contract negotiations, and the cause of action arose abroad and was unrelated to the company's contacts with the forum state. In *Helicopteros*, the survivors of four United States citizens, who had died in a helicopter crash in Peru, filed wrongful death actions in Texas against the owner and operator of the helicopter, a Colombian corporation. (*Id.* at pp. 409-410.) Prior to the helicopter crash, the Colombian corporation had conducted contract negotiations in Texas with the decedents' Texas employer to provide helicopter services, bought helicopters in Texas, and sent employees there for training, but did not conduct other operations or maintain a place of business in the state. None of the plaintiffs or their decedents resided in Texas. (*Id.* at pp. 410-412.) The high court concluded that neither the negotiation of a single contract and receipt of contractual payment through a Texas bank, nor the purchase of helicopters and associated employee training

sessions in Texas, constituted "the kind of continuous and systematic general business contacts" that had justified general jurisdiction in *Perkins*. (*Helicopteros* at p. 416; see *id.* at pp. 416-418.)

More recently, in *Goodyear*, *supra*, 564 U.S. ___ [131 S.Ct. 2846], and *Daimler*, *supra*, 571 U.S. ___ [134 S.Ct. 746], the high court significantly elaborated upon its analysis of general jurisdiction, clarifying that in order to support the exercise of general jurisdiction over a corporation its contacts with the forum state must be so extensive as to render the company essentially "'at home'" in the state. (*Daimler*, *supra*, 571 U.S. at p. ___ [134 S.Ct. at p. 751; see *Goodyear*, *supra*, 564 U.S. at p. ___ [131 S.Ct. at p. 2851].) The United States Supreme Court's description of general jurisdiction for purposes of the federal due process clause, as set forth in *Goodyear* and *Daimler*, is binding upon us and, as explained below, dictates the conclusion that BMS is not subject to the general jurisdiction of California courts.

In *Goodyear*, the high court concluded that the plaintiffs failed to establish support for the exercise of general jurisdiction where the defendant companies were based abroad, sold only a limited quantity of their products in the forum state, and the cause of action — involving the defendants' products sold abroad — also arose abroad. In that case, two young men from North Carolina were killed in a bus accident outside Paris, France. (*Goodyear*, *supra*, 564 U.S. at p. ___ [131 S.Ct. at p. 2851].) Their parents attributed the accident to an allegedly defective tire manufactured by Goodyear's subsidiary in Turkey and filed suit in a North Carolina state

court, naming Goodyear and its subsidiaries in Turkey, France, and Luxembourg as defendants. (*Id.* at pp. ___-___ [131 S.Ct. at pp. 2851-2852].) Although a small percentage of their tires was distributed in North Carolina by other Goodyear affiliates, the foreign subsidiaries challenged the North Carolina court's exercise of general jurisdiction over them, contending that they did no direct business and employed no workers in North Carolina. (*Id.* at pp. ___, ___ [131 S.Ct. at pp. 2850, 2852].)

The high court first noted that North Carolina courts lacked specific jurisdiction to adjudicate the controversy because the accident had occurred abroad and the allegedly defective tire had been manufactured and sold abroad. (*Goodyear*, *supra*, 564 U.S. at p. ___ [131 S.Ct. at p. 2851].) The court then held that the defendant corporations' contacts with North Carolina were also insufficient for general jurisdiction: "Unlike the defendant in *Perkins*, whose sole wartime business activity was conducted in Ohio, petitioners are in no sense at home in North Carolina. Their attenuated connections to the State . . . fall far short of . . . 'the continuous and systematic general business contacts' necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State." (*Goodyear*, *supra*, at p. ___ [131 S.Ct. at p. 2857], quoting *Helicopteros*, *supra*, 466 U.S. at p. 416.) The *Goodyear* court explained its "at home" rule for corporations as analogous to a natural person's domicile in the forum state: "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's

domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." (*Goodyear*, *supra*, at p. ___ [131 S.Ct. at pp. 2853-2854].)

Three years after *Goodyear*, in *Daimler*, supra, 571 U.S. ___ [134 S.Ct. 746], the court further elaborated on its articulation of the "at home" requirement. In *Daimler*, Argentinian residents brought an action in California against DaimlerChrysler AG (DaimlerChrysler), a German public stock company, alleging that its wholly owned subsidiary, Mercedes-Benz Argentina, had "collaborated with state security forces to kidnap, detain, torture, and kill" the plaintiffs or their relatives in Argentina during that nation's " 'Dirty War.' " (*Daimler*, *supra*, at p. ___ [134 S.Ct. at pp. 750-751].) The plaintiffs' claim of general jurisdiction over DaimlerChrysler in California was based in significant part on the California activities of another DaimlerChrysler subsidiary, Mercedes-Benz USA, LLC (MBUSA). Although incorporated in Delaware and headquartered in New Jersey, MBUSA had substantial facilities in California, using them to import and distribute Mercedes-Benz automobiles in the state. (*Id.* at p. ___ [134 S.Ct. at pp. 751-752].)

Even attributing to DaimlerChrysler the activities of its subsidiary, MBUSA, the high court nevertheless found DaimlerChrysler's contacts with California insufficient to justify the exercise of general jurisdiction over it. (*Daimler*, *supra*, 571 U.S. at p. ___ [134 S.Ct. at p. 760].) The court reiterated its observation in *Goodyear* that a corporation's state of incorporation and its principal place of business

are the two "paradigm all-purpose forums." (*Daimler*, *supra*, at p. ___ [134 S.Ct. at p. 760.) Although it did not limit general jurisdiction to those two circumstances, the *Daimler* court explained that general jurisdiction may not be based merely on activities in the forum state that can be characterized as continuous and systematic; rather, the corporation's activities must be "'so "continuous and systematic" as to render [it] essentially at home in the forum State.'" (*Id.* at p. ___ [134 S.Ct. at p. 761], quoting *Goodyear*, *supra*, 564 U.S. at p. ___ [131 S.Ct. at p. 2851].)

The *Daimler* court acknowledged that in an exceptional case such as *Perkins* "a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." (*Daimler*, *supra*, 571 U.S. at p. ___, fn. 19 [134 S.Ct. at p. 761, fn. 19].) The court, however, emphasized the truly "'exceptional facts'" of *Perkins*, where "[g]iven the wartime circumstances, Ohio could be considered 'a surrogate for the place of incorporation or head office.'" (*Daimler*, *supra*, at p. ___, fn. 8 [134 S.Ct. at p. 756, fn. 8].) DaimlerChrysler's activities in California, the court observed, "plainly do not approach that level." (*Id.* at p. ___, fn. 19 [134 S.Ct. at p. 761, fn. 19.)

Furthermore, in responding to a concurring opinion by Justice Sotomayor, the *Daimler* majority made clear that the general jurisdiction inquiry "does not 'focu[s] solely on the magnitude of the defendant's in-state contacts.'" (*Daimler*, *supra*, 571 U.S. at p. ___, fn. 20 [134 S.Ct. at p. 762, fn. 20].) Instead, general

jurisdiction "calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide." (*Ibid.*) Otherwise, a corporation with significant operations in many states would be deemed at home in all of them. (*Ibid.*) The majority reasoned that to allow the adjudication in California of a dispute arising solely in Argentina merely based on MBUSA's sales activities in the state would give the same global adjudicatory reach to every state in which DaimlerChrysler or its subsidiary had sizeable sales. The court rejected such an "exorbitant exercise[] of all-purpose jurisdiction" because it would defeat the ability of out-of-state defendants to structure their conduct so as to have some predictability regarding the possibility of being subjected to litigation in a given forum state. (*Id.* at p. ___ [134 S.Ct. at pp. 761-762].)

The high court also made clear that because the plaintiffs in *Daimler* had never attempted to argue that California could assert specific jurisdiction over DaimlerChrysler, the court had no reason to undertake such an analysis. (*Daimler*, *supra*, 571 U.S. at p. ___ [134 S.Ct. at p. 758].)

2. *Plaintiffs have failed to show that BMS is subject to general jurisdiction in California*

The United States Supreme Court's at home rule for general jurisdiction over a corporation, as articulated in *Goodyear* and *Daimler*, and, to some extent *Perkins*, defeats the nonresident plaintiffs' claim that California may assert general jurisdiction over BMS. BMS may be regarded as being at home in Delaware, where it is incorporated, or perhaps in New York and New Jersey, where it maintains its principal business centers. Although the company's

ongoing activities in California are substantial, they fall far short of establishing that is it at home in this state for purposes of general jurisdiction.

Similar to the California subsidiary in *Daimler*, BMS has sold large volumes of its products in California. Nevertheless, the high court plainly rejected the theory that a corporation is at home wherever its sales are "sizeable." (*Daimler*, *supra*, 571 U.S. at p.___ [134 S.Ct. at p. 761].) BMS employed approximately 164 people in California in addition to its 250 sales representatives in this state. But the company's total California operations are much less extensive than its activities elsewhere in the United States. As noted earlier, in New York and New Jersey alone, BMS employed approximately 6,475 people, 51 percent of its United States workforce. In assessing BMS's California business activities in comparison to the company's business operations "in their entirety, nationwide," we find nothing to warrant a conclusion that BMS is at home in California. (*Daimler*, *supra*, at p. ___, fn. 20 [134 S.Ct. at p. 762, fn. 20].) As the high court warned in *Daimler*, to conclude that BMS may be sued in California on any cause of action, whether or not related to its activities here, under a theory of general jurisdiction, would be to extend globally the adjudicatory reach of every state in which the company has significant business operations.

The nonresident plaintiffs stress that in neither *Goodyear* nor *Daimler* did the high court strictly limit general jurisdiction to a company's state of incorporation or its principal place of business. Nevertheless, both decisions make clear that the suitability of general jurisdiction is rooted in the

concept of an individual's domicile and its equivalent place for a corporation. (*Daimler*, *supra*, 571 U.S. at p. ___ [134 S.Ct. at p. 760]; *Goodyear*, *supra*, 564 U.S. 437 [131 S.Ct. at pp. 2853-2854].) Therefore, setting aside the state of a company's incorporation or its headquarters, a plaintiff has the burden of showing that a company's conduct in a given forum state may be so substantial and of such a kind as to render it at home there.

Goodyear and *Daimler* approved the finding of general jurisdiction in *Perkins*, *supra*, 342 U.S. 437. That case involved the exceptional fact pattern of a mining company's wartime relocation of its overseas operations to Ohio, which functioned as the equivalent of the corporation's headquarters through a home office in the company president's own residence. Quite literally, the mining company in *Perkins* was also at home in this unique context. But nothing in the record of the present matter suggests that California has served as the equivalent of BMS's headquarters, even temporarily.

The nonresident plaintiffs also rely on the fact that BMS has long been registered to do business in California and has maintained an agent for service of process here. California law, however, requires a foreign corporation transacting business here to name an agent in the state for service of process. (Corp. Code, § 2105, subd. (a)(5).) As the high court has explained, "[t]he purpose of state statutes requiring the appointment by foreign corporations of agents upon whom process may be served is primarily to subject them to the jurisdiction of local courts in controversies *growing out of transactions within the State*." (*Morris & Co. v. Ins. Co.* (1929)

279 U.S. 405, 408-409, italics added.) Accordingly, a corporation's appointment of an agent for service of process, when required by state law, cannot compel its surrender to general jurisdiction for disputes unrelated to its California transactions. The "designation of an agent for service of process and qualification to do business in California alone are insufficient to permit general jurisdiction." (*Thomson v. Anderson* (2003) 113 Cal.App.4th 258, 268, citing *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 1095; *Gray Line Tours v. Reynolds Electrical & Engineering Co.* (1987) 193 Cal.App.3d 190, 194.)

Finally, the nonresident plaintiffs argue BMS is subject to general jurisdiction in California because it has contracted for distribution of Plavix with McKesson Corporation, which is headquartered in San Francisco, allowing BMS "to make a substantial profit within California through McKesson's California contacts." As explained above, however, BMS's sizeable sales of its products in California are insufficient, under *Goodyear*, *supra*, 564 U.S. ___ [131 S.Ct. 2846] and *Daimler*, *supra*, 571 U.S. ___ [134 S.Ct. 746], to make it at home in this state and subject it to the general jurisdiction of our courts. That some of these sales were made to or through a distributor headquartered here does not change the analysis.

As a result, we conclude that BMS is not subject to the general jurisdiction of the California courts.

B. Specific Jurisdiction

1. *Case law concerning specific jurisdiction*

Although the high court's recent cases have narrowed the scope of general jurisdiction, in *Daimler* the majority specifically commented on the continued viability and breadth of the court's preexisting specific jurisdiction jurisprudence. In responding to the concern expressed by Justice Sotomayor in her separate opinion in *Daimler* that the court was committing an injustice by limiting the availability of general jurisdiction, the majority remarked that "Justice Sotomayor treats specific jurisdiction as though it were barely there" and that "[g]iven the many decades in which specific jurisdiction has flourished, it would be hard to conjure up an example of the 'deep injustice' Justice Sotomayor predicts as a consequence of our holding that California is not an all-purpose forum for suits against [DaimlerChrysler]." (*Daimler*, *supra*, 571 U.S. at p. ___, fn. 10 [134 S.Ct. at p. 758, fn. 10].)

The basic precepts governing specific jurisdiction set forth in pre-*Daimler* decisions are well settled. In ascertaining the existence of specific jurisdiction, courts must analyze the " 'relationship among the defendant, the forum, and the litigation.' " (*Helicopteros*, *supra*, 466 U.S. at p. 414, quoting *Shaffer v. Heitner* (1977) 433 U.S. 186, 204.) The question of whether a court may exercise specific jurisdiction over a nonresident defendant involves examining (1) whether the defendant has " 'purposefully directed' " its activities at the forum state (*Keeton v. Hustler Magazine, Inc.* (1984) 465 U.S. 770, 774 (Keeton)); (2) whether the plaintiff's claims arise out of or are related to these

forum-directed activities (*Helicopteros*, *supra*, 466 U.S. at p. 414); and (3) whether the exercise of jurisdiction is reasonable and does not offend "'"traditional notions of fair play and substantial justice."'"[2] (*Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 113 (*Asahi*), quoting *International Shoe*, *supra*, 326 U.S. at p. 316.)

In our own jurisprudence, we have said that a plaintiff has the initial burden of demonstrating facts to support the first two factors, which establish the requisite minimum contacts with the forum state. The burden then shifts to the defendant to show that the exercise of jurisdiction would be unreasonable under the third factor. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062 (*Snowney*); see also *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 477 (*Burger King*) ["where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable"].)

Our courts have also explained that the relatedness requirement for specific jurisdiction is determined under the " 'substantial connection' test," which "is satisfied if 'there is a substantial nexus or connection between the defendant's forum activities and the plaintiff's claim.' [Citation.]" (*Snowney*, *supra*,

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[2] BMS states it is not contesting the first or third factors and that the company is contesting only whether the claims of the nonresident plaintiffs are related to its activities in California. But, as we will explain, BMS's arguments are not as narrow as it contends. Accordingly, we will examine here all three factors relevant to the specific jurisdiction analysis.

35 Cal.4th at p. 1068.) This test requires courts to evaluate the nature of the defendant's activities in the forum and the relationship of the claim to those activities in order to answer the ultimate question under the due process clause: whether the exercise of jurisdiction in the forum is fair. Under the substantial connection test, " 'the intensity of forum contacts and the connection of the claim to those contacts are inversely related.' " (*Ibid.*) " '[T]he more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim.' [Citation.] Thus, '[a] claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction.' . . . Indeed, ' " '[o]nly when the operative facts of the controversy are not related to the defendant's contact with the state can it be said that the cause of action does not arise from that [contact].' " ' [Citation.]" (*Ibid.*) Finally, the defendant's activities in the forum state need not be either the proximate cause or the "but for" cause of the plaintiff's injuries. (*Ibid.*)

2. *Purposeful availment*

As the high court has explained, "[t]he Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations,' " and that "[b]y requiring that individuals have 'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign,' " the due process clause affords predictability and allows potential defendants to tailor their conduct " 'with some minimum assurance

as to where that conduct will and will not render them liable to suit.' " (*Burger King*, *supra*, 471 U.S. at pp. 471-472.)

"Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this 'fair warning' requirement is satisfied if the defendant has 'purposefully directed' his activities at residents of the forum, [citation], and the litigation results from alleged injuries that 'arise out of or relate to' those activities." (*Burger King*, *supra*, 471 U.S. at p. 472, fn. omitted.) These activities cannot be the result of the unilateral actions of another party or a third person, because the " 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts." (*Id.* at p. 475.) "When a [nonresident defendant] 'purposefully avails itself of the privilege of conducting activities within the forum State,' [citation], it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297 (*World-Wide Volkswagen*).)

In *Snowney*, a California resident filed a class action in this state against a group of Nevada hotels, alleging several causes of action related to their purported failure to provide notice of an energy surcharge imposed on hotel guests. (*Snowney, supra*, 35 Cal.4th at pp. 1059-1060.) The hotels conducted no business and had no bank accounts or employees in California, but they advertised heavily in this

state using California-based media, including billboards, newspapers, and ads aired on radio and television stations, as well as a Web site for room quotes and reservations. They also received a significant portion of their business from California residents who stayed at their hotels. (*Id.* at p. 1059.)

This court held that the Nevada hotels had purposefully availed themselves of the privilege of doing business in California because their Web site had touted "the proximity of their hotels to California" and provided "driving directions from California to their hotels," thereby "specifically target[ing] residents of California." (*Snowney*, *supra*, 35 Cal.4th at p. 1064.) Furthermore, "[a]side from their Web site specifically targeting California residents, defendants advertised extensively in California through billboards, newspapers, and radio and television stations located in California" and "regularly sent mailings advertising their hotels to selected California residents." (*Id.* at p. 1065.) "In doing so, defendants necessarily availed themselves of the benefits of doing business in California and could reasonably expect to be subject to the jurisdiction of courts in California." (*Ibid.*)

In the present matter, there is no question that BMS has purposely availed itself of the privilege of conducting activities in California, invoking the benefits and protection of its laws, and BMS does not contend otherwise. Not only did BMS market and advertise Plavix in this state, it employs sales representatives in California, contracted with a California-based pharmaceutical distributor, operates research and laboratory facilities in this state, and even has an office in the state capital to

lobby the state on the company's behalf. As in *Snowney*, *supra*, 35 Cal.4th 1054, BMS actively and purposefully sought to promote sales of Plavix to California residents, resulting in California sales of nearly $1 billion over six years. Moreover, unlike the Nevada hotels in *Snowney*, BMS maintains a physical presence in California, employing well over 400 people here.

Accordingly, we conclude that BMS has purposefully availed itself of the benefits of California such that the first element of the test for specific personal jurisdiction is met concerning matters arising from or related to BMS's contacts with the state. On the basis of these extensive contacts relating to the design, marketing, and distribution of Plavix, BMS would be on clear notice that it is subject to suit in California concerning such matters. (*World-Wide Volkswagen*, *supra*, 444 U.S. at p. 19.)

3. *Arises from or is related to*

As previously described, "for the purpose of establishing jurisdiction the intensity of forum contacts and the connection of the claim to those contacts are inversely related." (*Vons*, *supra*, 14 Cal.4th at p. 452.) "[T]he more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim." (*Id.* at p. 455.) Thus, "[a] claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction." (*Id.* at p. 452.)

In *Vons*, we assessed, on relatedness grounds, whether California courts could exercise specific

jurisdiction over nonresident companies for causes of action involving out-of-state injuries that did not arise directly from their California contacts. (*Vons, supra*, 14 Cal.4th 434.) The plaintiffs in *Vons* were restaurant franchisees who brought an action for loss of business after contaminated hamburger meat caused illnesses in California and Washington, resulting in adverse publicity. In California, the franchisees sued two parties: the franchisor and the hamburger supplier, Vons Companies, Inc. (Vons), which processed hamburger patties in California and supplied them to the franchisor. Vons cross-complained against the franchisor and two Washington franchisees, suing them for negligence and indemnification for failing to properly cook the hamburger meat at restaurants in Washington, causing the injuries and deaths to customers there that gave rise to their joint liability with Vons. In *Vons*, the issue was whether the California court had specific jurisdiction over these two Washington-based franchisees, Seabest Foods, Inc., and Washington Restaurant Management, Inc. (WRMI). (*Id.* at pp. 440-442.)

Seabest's and WRMI's contacts with California included food purchases from California suppliers, sending personnel to franchisor training sessions in California, remitting franchise payments to California, permitting the franchisor's inspection of their restaurants by its California-based inspectors, and the negotiation of their franchise agreements in California, which agreements stated that any disputes would be governed by California law. Because Vons was not a party to the franchise contracts for either Seabest or WRMI, those

franchisees' contacts with California did not directly give rise to the causes of action asserted by Vons. (*Vons*, *supra*, 14 Cal.4th at p. 452.) Nevertheless, this court found personal jurisdiction was properly exercised over them in California because the forum contacts bore a substantial relation to the cause of action. We explained that requiring the two Washington franchisees to answer to Vons's claim "is not to allow a third party unilaterally to draw them into a connection with the state; rather, it was Seabest and WRMI who established the connection." (*Id.* at p. 451.)

This court further elaborated: "A claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction. Rather, as long as the claim bears a substantial connection to the nonresident's forum contacts, the exercise of specific jurisdiction is appropriate. The due process clause is concerned with protecting nonresident defendants from being brought unfairly into court in the forum, on the basis of random contacts. That constitutional provision, however, does not provide defendants with a shield against jurisdiction when the defendant purposefully has availed himself or herself of benefits in the forum." (*Vons*, *supra*, 14 Cal.4th at p. 452.)

In the present matter, plaintiffs allege that BMS negligently designed and manufactured Plavix, failed to disclose material information in its advertising and promotion of Plavix and fraudulently and falsely advertised and promoted the product, and that BMS is liable to those who relied on such representations and were injured by Plavix. Their complaints also

contend that "Plavix was heavily marketed directly to consumers through television, magazine and internet advertising." BMS does not contest that its marketing, promotion, and distribution of Plavix was nationwide and was associated with California-based sales representatives and a California distributor, McKesson Corporation, which plaintiffs allege is jointly liable.

The California plaintiffs' claims concerning the alleged misleading marketing and promotion of Plavix and injuries arising out of its distribution to and ingestion by California plaintiffs certainly arise from BMS's purposeful contacts with this state, and BMS does not deny that it can be sued for such claims in California. As to the nonresident plaintiffs' claims, the Court of Appeal understood plaintiffs' complaints as alleging that BMS sold Plavix to both the California plaintiffs and the nonresident plaintiffs as part of a common nationwide course of distribution. BMS has not taken issue with that characterization, nor has it asserted that either the product itself or the representations it made about the product differed from state to state. Both the resident and nonresident plaintiffs' claims are based on the same allegedly defective product and the assertedly misleading marketing and promotion of that product, which allegedly caused injuries in and outside the state. Thus, the nonresident plaintiffs' claims bear a substantial connection to BMS's contacts in California. BMS's nationwide marketing, promotion, and distribution of Plavix created a substantial nexus between the nonresident plaintiffs' claims and the company's contacts in California concerning Plavix.

Plaintiffs also allege that BMS negligently developed and designed Plavix, which serves as the basis of its claims of products liability, negligence, and breaches of express and implied warranties. BMS maintains research and laboratory facilities in California, and it presumably enjoys the protection of our laws related to those activities. Although there is no claim that Plavix itself was designed and developed in these facilities, the fact that the company engages in research and product development in these California facilities is related to plaintiffs' claims that BMS engaged in a course of conduct of negligent research and design that led to their injuries, even if those claims do not arise out of BMS's research conduct in this state. Accordingly, BMS's research and development activity in California provides an additional connection between the nonresident plaintiffs' claims and the company's activities in California.

BMS and our dissenting colleagues attempt to characterize the claims of the California plaintiffs as "parallel" to and failing to "intersect" with the nonresident plaintiffs' claims and argue based on this characterization that BMS's conduct in California is insufficiently related to the nonresident plaintiffs' claims. More specifically, BMS contends that the nonresident plaintiffs' claims would be exactly the same if BMS had no contact whatsoever with California. This characterization ignores the uncontested fact that all the plaintiffs' claims arise out of BMS's nationwide marketing and distribution of Plavix. The claims are based not on "similar" conduct, as our dissenting colleagues contend, but instead on a single, coordinated, nationwide course of

conduct directed out of BMS's New York headquarters and New Jersey operations center and implemented by distributors and salespersons across the country. (See *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 151 [reasoning that the interstate nature of a defendant's business, while "not an independent basis of jurisdiction" weighs "in favor of requiring him to defend here"].)

Moreover, the argument that claims based on a nationwide course of conduct fail to establish relatedness for purposes of minimum contacts rests on the invalid assumption that BMS's forum contacts must bear some substantive legal relevance to the nonresident plaintiffs' claims, as the dissent explicitly contends. Yet in *Vons*, this court carefully considered and ultimately rejected such a substantive relevance requirement. (*Vons*, *supra*, 14 Cal.4th at p. 475 ["we conclude that the substantive relevance test is inappropriate"].) Rather, it is sufficient if "because of the defendants' relationship with the forum, it is not unfair to require that they answer in a California court for an alleged injury that is substantially connected to the defendants' forum contacts." (*Id.* at p. 453.) Here, BMS's forum contacts, including its California-based research and development facilities, are substantially connected to the nonresident plaintiffs' claims because those contacts are part of the nationwide marketing and distribution of Plavix, a drug BMS researched and developed, that gave rise to all the plaintiffs' claims.

BMS relies on two cases to contend that California courts may not exercise specific jurisdiction over a nonresident defendant sued by a nonresident

plaintiff for injuries occurring outside the state. But in both cases, the defendant company conducted no business in California and had no employees here. (*Fisher Governor Co. v. Superior Court* (1959) 53 Cal.2d 222, 224 [the defendant had "no employees or property in California and has not appointed an agent to receive service of process here"]; *Boaz v. Boyle & Co.* (1995) 40 Cal.App.4th 700, 715 (*Boaz*) [the defendant had "not been licensed to do business in California, and . . . had neither salespersons, employees or representatives here, nor any offices, bank accounts, records or property in this state"].)

Our dissenting colleagues also rely on *Boaz* and a pharmaceutical case from the First Circuit, *Glater v. Eli Lilly & Co.* (1st Cir. 1984) 744 F.2d 213, which held that specific jurisdiction had not been established because the plaintiff's cause of action did not "arise from" the company's forum activities. (*Id* at p. 216.) Although the facts of *Glater* are also involve the sales and marketing of an allegedly defective drug, the pharmaceutical company's contacts with the forum state, New Hampshire, appear to have been far less substantial than BMS's contacts to California.[3]

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[3] In addition, the dissent relies on *Hanson v. Denckla* (1958) 357 U.S. 235, where the plaintiffs filed suit in Florida against a Delaware-based trustee who had no purposeful contacts with Florida, other than those caused by the unilateral activity of the plaintiffs. The dissent's reliance on this case is inapposite because the high court concluded that the defendant in that matter had not purposefully availed herself "of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." (*Id.* at p. 253.) Here, the parties do not contest that BMS has purposefully availed itself of California law.

Moreover, none of these cases had the benefit of our reasoning in Vons, where we made clear that we had adopted a sliding scale approach to specific jurisdiction in which we recognized that "the more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim." (*Vons*, *supra*, 14 Cal.4th at p. 455.) As previously described, BMS's contacts with California are substantial and the company has enjoyed sizeable revenues from the sales of its product here — the very product that is the subject of the claims of all of the plaintiffs. BMS's extensive contacts with California establish minimum contacts based on a less direct connection between BMS's forum activities and plaintiffs' claims than might otherwise be required.

In sum, taking into account all of BMS's activities in this state and their relation to the causes of action at issue here, we conclude that the second element of specific jurisdiction is met, and hence, absent a showing to the contrary by BMS, it would be consistent with due process for it to be subject to litigation in this state concerning injuries allegedly caused by its product Plavix, including those injuries occurring out of state. Not only did BMS purposefully avail itself of the benefits of California by its extensive marketing and distribution of Plavix in this state and by contracting with a California distributor and employing hundreds of California-based salespersons, resulting in its substantial sales of that product here, but the company also maintains significant research and development facilities in California. All of plaintiffs' claims either arose from these activities or are related to those activities. The

circumstance that numerous nonresident plaintiffs have filed their claims alongside those of resident plaintiffs does not alter or detract from this substantial nexus.

As previously discussed, the due process protections afforded by the doctrine of specific jurisdiction are designed to give a potential nonresident defendant adequate notice that it is subject to suit there, and, accordingly, a prospective defendant can assess the extent of that risk and take measures to mitigate such risk or eliminate it entirely by severing its connection with the state. (*World-Wide Volkswagen*, *supra*, 444 U.S. at p. 297.) Indeed, far from taking measures to mitigate the risk of suit in particular forums, BMS embraced this risk by coordinating a single nationwide marketing and distribution effort and by engaging in research and development in California. In that regard, BMS was on notice that it could be sued in California by nonresident plaintiffs. In fact, our courts have frequently handled nationwide class actions involving numerous nonresident plaintiffs. (See *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148; *Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 915; *Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036; *Rutledge v. Hewlett-Packard Co.* (2015) 238 Cal.App.4th 1164; *Canon U.S.A., Inc. v. Superior Court* (1998) 68 Cal.App.4th 1.)

To the extent that BMS's arguments imply that a California court lacks personal jurisdiction over BMS to adjudicate the claims of the nonresident plaintiffs simply because the nonresident plaintiffs have no connection to and did not suffer any Plavix-related

injuries in the state, the high court has repeatedly rejected such a focus. The minimum contacts test assesses "the relationship among the defendant, the forum, and the litigation." (*Shaffer v. Heitner*, *supra*, 433 U.S. at p. 204.) As the high court explicitly declared in *Keeton*, a "plaintiff's residence in the forum State is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of defendant's contacts." (*Keeton*, *supra*, 465 U.S. at p. 780; see also *Walden v. Fiore*, *supra*, 571 U.S. ___, ___ [134 S.Ct. 1115, 1126] ["it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State"]; *Helicopteros*, *supra*, 466 U.S. at p. 412, fn. 5 [the plaintiffs' "lack of residential or other contacts with Texas of itself does not defeat otherwise proper jurisdiction"]; *Calder v. Jones* (1984) 465 U.S. 783, 788 [the "plaintiff's lack of 'contacts' will not defeat otherwise proper jurisdiction"]; *Rush v. Savchuk* (1980) 444 U.S. 320, 332 ["the plaintiff's contacts with the forum" cannot be "decisive in determining whether the defendant's due process rights are violated"]; see also *Epic Communications, Inc. v. Richwave Technology, Inc.* (2009) 179 Cal.App.4th 314, 336 ["We fail to see how the non-California residency of plaintiff can make a 'compelling case' " with respect to any of the factors supporting personal jurisdiction].)

Finally, BMS and our dissenting colleagues further allege that permitting the exercise of specific jurisdiction in California for the claims of nonresidents based on the company's nationwide sales and marketing would effectively subvert the holding of *Daimler*, *supra*, 571 U.S. ___ [134 S.Ct.

746], in which the court refused to base jurisdiction merely on nationwide sales. But BMS's argument overstates the effect of our conclusion that specific jurisdiction is properly exercised here. Our decision does not render California an all-purpose forum for filing suit against BMS for *any* matter, regardless of whether the action is related to its forum activities. Rather, as with any matter concerning specific jurisdiction, the minimum contacts test is applied on a case-by-case basis, focusing on the nature and quality of the defendant's activities in the state. (*Burger King*, *supra*, 471 U.S. at pp. 474-475.) We simply hold under this specific set of circumstances that, for purposes of establishing the requisite minimum contacts, plaintiffs' claims concerning the allegedly defective design and marketing of Plavix bear a substantial nexus with or connection to BMS's extensive contacts with California as part of Plavix's nationwide marketing, its sales of Plavix in this state, and its maintenance of research and development facilities here so as to permit specific jurisdiction.

4. *The reasonableness of specific jurisdiction*

As previously described, after a plaintiff meets the burden of showing that a defendant has purposefully established minimum contacts with the forum state, the burden then shifts to the defendant to show that the assertion of specific jurisdiction is unreasonable because it does not comport with " 'traditional notions of fair play and substantial justice.' " (*International Shoe*, *supra*, 326 U.S. at p. 316.) BMS does not argue that the assertion of jurisdiction in this case would be fundamentally unfair, but does advance several arguments it contends defeat the claim that their causes of action arose from or are

related to its contacts with California. Analytically, these arguments are more pertinent to consideration of whether the exercise of specific jurisdiction is reasonable, not whether the contested claims arise from or relate to the company's forum activities. The questions raised by BMS — whether California has an interest in litigating the claims of nonresidents, whether BMS will unfairly bear a disproportionate burden of defending itself against all nationwide claims in a single venue of relatively few resident plaintiffs, and whether California should expend its judicial resources on the claims of nonresident plaintiffs — are all circumstances relevant to the issue of whether BMS has established that the exercise of jurisdiction is unreasonable. They do not bear upon the issue of whether the nonresident plaintiffs' claims arise from or are related to BMS's activities in the forum state. Accordingly, we will examine these arguments using the criteria governing reasonableness.

In determining whether the defendant has established that the exercise of specific jurisdiction is unreasonable, the court "must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief." (*Asahi*, *supra*, 480 U.S. at p. 113.) Although it must also weigh in its determination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies[,] and the shared interest of the several States in furthering fundamental substantive social policies" (*World-Wide Volkswagen*, *supra*, 444 U.S. at p. 292), a requirement that may "reflect[] an element of federalism and the character of state sovereignty vis-

à-vis other States" (*Insurance Corp. v. Compagnie des Bauxites* (1982) 456 U.S. 694, 703, fn. 10), the due process clause "is the only source of the personal jurisdiction requirement." (*Id.* at p. 703, fn. 10.) Accordingly, "[t]he relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States . . . [is] the central concern of the inquiry into personal jurisdiction." (*Shaffer v. Heitner*, *supra*, 433 U.S. at p. 204.)

a. *The burden on defendant in litigating the claims in California*

BMS complains that joining the claims of the nonresident plaintiffs to those of the comparatively smaller group of California plaintiffs would unfairly distribute the company's burden of defending this mass tort action by requiring it to defend itself against all nationwide claims in a forum where only a minor portion of its sales occurred. However, as the Court of Appeal noted, regardless of whether California exercises jurisdiction over nonresident plaintiffs' claims, BMS is already burdened by having to defend against the claims of 86 California plaintiffs. Certainly, the addition of 592 nonresident plaintiffs is a significant added burden, but the alternative is to litigate the claims of these other 592 nonresident plaintiffs in a scattershot manner in various other forums, in potentially up to 34 different states.[4] Such an alternative would seem to

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[4] Our dissenting colleagues note that nonresident plaintiffs presumably could file their claims in Delaware or perhaps New Jersey or New York, or in federal court, where they could be coordinated as part of multidistrict litigation, but nothing

be a far more burdensome distribution of BMS's resources in defending these cases than defending them in a single, focused forum.

Pretrial preparation and discovery concerning plaintiffs' claims may pose challenges given the diversity of their states of residence, but, as the Court of Appeal recognized, our state's Civil Discovery Act provides for taking depositions outside California for use at trial. (Code Civ. Proc., § 2026.010.) Moreover, information and documents relevant to plaintiffs' requests for discovery will likely be located in New York or New Jersey, as will the individuals whom plaintiffs are likely to seek to depose, regardless of the venue in which the plaintiffs' claims are filed.

Finally, BMS has provided no evidence to suggest that the cost of litigating plaintiffs' claims in San Francisco is excessive or unduly burdensome for BMS compared to any other relevant forum or forums.[5] BMS, therefore, fails to show that its defense of plaintiffs' claims in California places on it an undue burden.

b. *California's interest in providing a forum for plaintiffs in this case*

BMS further claims that California has no legitimate interest in adjudicating the claims of nonresidents because they have no connection to the

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requires them to choose one of these forums rather than their home states.

[5] Of course, BMS is free to make such a showing on a motion asserting forum non conveniens. (*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751.) We merely hold that, for purposes of defeating specific jurisdiction, BMS fails to meet its burden.

state. Admittedly, the fact that the nonresident plaintiffs greatly outnumber the California plaintiffs does give us some pause. But in ascertaining the reasonableness of exercising specific jurisdiction, no one factor, by itself, is determinative. More important, there are identifiable interests our state holds in providing a forum for both the resident and nonresident plaintiffs.

First, evidence of other injuries is "admissible to prove a defective condition, knowledge, or the cause of an accident," provided that the circumstances of the other injuries are similar and not too remote. (*Ault v. International Harvester* (1974) 13 Cal.3d 113, 121-122; see also *Elsworth v. Beech Aircraft Corp.* (1984) 37 Cal.3d 540, 555 [evidence of prior accidents involving similar airplane with identical single-engine stall-spin characteristics was admissible].) To the extent that evidence of the injuries allegedly suffered by the nonresident plaintiffs may be relevant and admissible to prove that Plavix similarly injured the California plaintiffs, trying their cases together with those of nonresident plaintiffs could promote efficient adjudication of California residents' claims. California, therefore, has a clear interest in providing a forum for this matter.

This interest is further underscored by the substantial body of California law aimed at protecting consumers from the potential dangers posed by prescription medication, including warnings about serious side effects and prohibiting false and misleading labeling. (See, e.g., Bus. & Prof. Code, §§ 4070-4078.) As this court has previously recognized, "California has a strong interest in

protecting its consumers by ensuring that foreign manufacturers comply with the state's safety standards." (*Asahi*, *supra*, 39 Cal.3d at p. 53.) It also bears reemphasis that there are no fewer than 250 BMS sales representatives in California. Although at this early stage of the proceedings, the record contains very little evidence concerning the promotional and distribution activities of these sales representatives, California has a clear interest in regulating their conduct.[6] (Cf. Bus. & Prof. Code, § 17500 [permitting claims by nonresidents who are deceived by representations "disseminated from" the State of California].)

In addition, California also has an interest in regulating the conduct of BMS's codefendant, McKesson Corporation, which is headquartered in California, as a joint defendant with BMS. As noted above, in *Vons*, we held that specific jurisdiction was proper over cross-defendants who entered into contracts in California that gave rise to the joint liability and the corresponding right to

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[6] Our dissenting colleagues contend that the record does not establish that BMS's sales representatives misled nonresident physicians concerning the safety and efficacy of Plavix or that McKesson was responsible for providing Plavix to any of the nonresident plaintiffs. (Dis. opn. of Werdegar, J., *post*, at pp. 11-12.) Certainly, the existence of such evidence would lend additional support to the question of whether the claims of the nonresident plaintiffs are not just related to but actually also arise out of BMS's contacts with California. But our discussion here is merely focused on the reasonableness of asserting specific jurisdiction in this matter because our state has an interest in regulating conduct in the pharmaceutical industry that could pose a danger to public welfare, regardless of residency.

indemnification on which the cross-claims against them were based. (See *Vons*, *supra*, 14 Cal.4th at pp. 456-457.) California's interest in adjudicating claims on which McKesson Corporation, a California resident, may be jointly liable with BMS, a nonresident defendant, is readily apparent. Were BMS dismissed from nonresident plaintiffs' cases, California courts would be required to hear their claims against McKesson Corporation while the same plaintiffs litigated the same claims arising from the same facts and the same evidence against BMS in a forum potentially on the opposite side of the country.

c. *Plaintiffs' interest in a convenient and effective forum*

Nonresident plaintiffs have obviously purposefully availed themselves of the jurisdiction of courts in this state by choosing to file all of their claims here — strong evidence that the forum is convenient to them. Eighty-six of the 678 plaintiffs reside in California; only Texas, with 92 plaintiffs, is home to more.

Moreover, the current forum, San Francisco Superior Court, is equipped with a complex litigation department that is well suited to expeditiously handle such large cases. BMS has not shown that this forum is inconvenient for plaintiffs.

d. *Judicial economy and the shared interests of the interstate judicial system*

BMS argues that it would be a waste of California's judicial resources to provide a forum for the nonresident plaintiffs. To be sure, a single court hearing the claims of hundreds of plaintiffs is a

significant burden on that court. But the overall savings of time and effort to the judicial system, both in California and interstate, far outweigh the burdens placed on the individual forum court. The alternative that BMS proposes would result in the duplication of suits in in numerous state or federal jurisdictions at substantial costs to both the judicial system and to the parties, who would have to deal with disparate rulings on otherwise similar procedural and substantive issues.

For claims of mass injuries stemming from a single product or event, plaintiffs often resort to the mechanism of the class action, which promotes "efficiency and economy of litigation." (*Crown, Cork & Seal Co. v. Parker* (1983) 462 U.S. 345, 349.) But, unlike class actions in which common questions of law, fact, and proximate cause predominate among members of the plaintiff class, "mass-tort actions for personal injury most often are not appropriate for class action certification." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1123.) As this court has previously recognized, "[t]he major elements in tort actions for personal injury — liability, causation, and damages — may vary widely from claim to claim, creating a wide disparity in claimants' damages and issues of defendant liability, proximate cause, liability of skilled intermediaries, comparative fault, informed consent, assumption of the risk and periods of limitation." (*Ibid.*)

Yet, because mass tort injuries may involve diverse injuries or harm not amenable to the efficiency and economy of a class action, they present special problems for the proper functioning of the courts and the fair, efficient, and speedy administration of

justice. Without coordination, "those who win the race to the courthouse [and] bankrupt a defendant early in the litigation process" would recover but effectively shut out other potential plaintiffs from any recovery. (*In re Exxon Valdez* (9th Cir. 2000) 229 F.3d 790, 795-796.) Moreover, coordinated mass tort actions "also avoid the possible unfairness of punishing a defendant over and over again for the same tortious conduct." (*Id.* at p. 796.)

It is also important to note that many of the resident plaintiffs allege that Plavix caused them to suffer heart attacks, strokes, cerebral bleeding, and gastrointestinal bleeding. These are obviously severe medical conditions, and California has an interest in ensuring that litigation brought by its residents is resolved in a timely fashion. By separating the nonresident plaintiffs from the resident plaintiffs and forcing the nonresidents to sue in other states, it is fair to anticipate delays in the California proceedings that would be created by the litigation and appeals of discovery and factual conflicts in the various other forums. In that event, the California plaintiffs' litigation could be stalled for a significant period without resolution. Likewise, defendants would suffer the costs created by delay and uncertainty as to their potential liability, if any.

Moreover, the same concerns of delay and efficiency apply equally to the interstate judicial system. The other forums have an equally strong interest in the fair, efficient, and speedy administration of justice for both their resident plaintiffs and resident defendants. The consolidation of plaintiffs' claims in a single forum is a mechanism for promoting those interests.

Of course, the other potential forums also have a sovereign interest in seeing their laws applied to actions such as this one. But for purposes of establishing the propriety of personal jurisdiction, the high court has stated, "we do not think that such choice-of-law concerns should complicate or distort the jurisdictional inquiry." (*Keeton*, *supra*, 465 U.S. at p. 778.) Choice-of-law concerns might very well make a mass tort action unmanageable in certain circumstances, but that issue is not determinative at this stage of the proceedings.

Accordingly, BMS has failed to carry its burden of showing that the exercise of personal jurisdiction over it in this matter is unreasonable.

III. CONCLUSION

We conclude that BMS, despite its significant business and research activities in California, is not at home in our state for purposes of asserting general personal jurisdiction over it. However, we conclude that in light of BMS's extensive contacts with California, encompassing extensive marketing and distribution of Plavix, hundreds of millions of dollars of revenue from Plavix sales, a relationship with a California distributor, substantial research and development facilities, and hundreds of California employees, courts may, consistent with the requirements of due process, exercise specific personal jurisdiction over nonresident plaintiffs' claims in this action, which arise from the same course of conduct that gave rise to California plaintiffs' claims: BMS's development and nationwide marketing and distribution of Plavix. BMS cannot establish unfairness: Balancing the burdens imposed by this mass tort action, and given

its complexity and potential impact on the judicial systems of numerous other jurisdictions, we conclude that the joint litigation of the nonresident plaintiffs' claims with the claims of the California plaintiffs is not an unreasonable exercise of specific jurisdiction over defendant BMS.

IV. DISPOSITION

The judgment of the Court of Appeal is affirmed.

CANTIL-SAKAUYE, C. J.

WE CONCUR:

LIU, J.
CUÉLLAR, J.
KRUGER, J.

DISSENTING OPINION BY WERDEGAR, J.

The court holds today that 592 plaintiffs residing in states other than California may sue Bristol-Myers Squibb Company (BMS) in a California superior court for injuries resulting from these plaintiffs' use in their own states of BMS's prescription drug, Plavix. Because BMS is not incorporated or based in California, its activities in the state are insufficient to establish general personal jurisdiction—jurisdiction for disputes unrelated to the company's California activities—over it in California courts. (Maj. opn., *ante*, at p. 2.) The majority, however, finds BMS's California contacts sufficient for specific, case-related personal jurisdiction, even though Plavix was not developed or manufactured in California and the nonresident plaintiffs did not obtain the drug through California physicians or from a California source, and despite the requirement for specific jurisdiction that there be a substantial connection between the plaintiff's claim and the defendant's forum activities. (*Id.* at pp. 16-28; see *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 452 (*Vons*).)

I respectfully dissent from the court's decision on personal jurisdiction. I agree the extent and type of contacts to support general jurisdiction are lacking. But I find in the record no evidence of contacts with California that bear a substantial connection to the claims of these nonresidents. I therefore would hold specific jurisdiction has also not been established.

On a defendant's motion to quash service of process, the plaintiff asserting jurisdiction bears the burden of proving the extent of the defendant's forum contacts and their relationship to the plaintiff's

claims. (*Vons*, *supra*, 14 Cal.4th at p. 449; *Gilmore Bank v. AsiaTrust New Zealand Ltd.* (2014) 223 Cal.App.4th 1558, 1568.) In this case, the nonresident plaintiffs (real parties in interest on BMS's petition for writ of mandate) have failed to show *any* substantial nexus, causal or otherwise, between their claims and BMS's activities in California.

One can imagine a number of factual circumstances that might justify specific jurisdiction in a case like this. Unfortunately, none of those circumstances have been established here:

If real parties in interest had purchased Plavix while in California or from a California source, their claims could be considered substantially related to BMS's sale of Plavix in this state. *But the record contains no evidence connecting the Plavix taken by any of the nonresident plaintiffs to California.*

If real parties had been prescribed Plavix by a California doctor, their misrepresentation claims might be considered substantially related to BMS's marketing of Plavix to physicians here. *But there is no evidence of a California connection through real parties' prescribing physicians.*

If the Plavix taken by real parties had been manufactured in California, one might well consider their defective product claims substantially connected to BMS's forum contacts. *But the record shows Plavix has never been manufactured in California.*

If the Plavix taken by real parties had been distributed to their respective states by codefendant McKesson Corporation, which is headquartered in

San Francisco, it could be argued real parties' defective product claims were related to the distribution agreement between BMS and McKesson. *But real parties have adduced no evidence to show how or by whom the Plavix they took was distributed to the pharmacies that dispensed it to them.*

If Plavix had been developed in California, real parties' defective product claims could be considered related to that California activity. *But the record shows Plavix was developed not in California but in New York and New Jersey, where BMS has, respectively, its headquarters and major operating facilities.*

If the labeling, packaging, or regulatory approval of Plavix had been performed in or directed from California, some of real parties' misrepresentation claims would arguably be related to those California activities. *But BMS did none of those things in California.*

Finally, if the "nationwide marketing" campaign on which the majority relies (maj. opn., *ante*, at p. 27) had been created or directed from California, claims of misrepresentations in that marketing would have arisen from BMS's California contacts. *But according to the record, none of that marketing work was performed or directed by BMS's California employees.*

In the absence of a concrete factual relationship between their claims and BMS's contacts with the forum state, on what do real parties, and the majority of this court, base their argument for specific jurisdiction over BMS in California courts? In brief, their argument rests on similarity of claims and joinder with California plaintiffs. First, real

parties' claims arise from activities *similar* to those BMS conducted in California, because in marketing and selling Plavix throughout the United States, BMS sold the same allegedly defective product in California as in real parties' various states of residence and presumably made some of the same misrepresentations and omissions in those states and in California. Second, real parties are *joined* in this action with plaintiffs who are California residents and who allege similar claims. Neither of these factors, however, creates a connection between real parties' claims of injury and BMS's California activities sufficient to satisfy due process.

By statute, the personal jurisdiction of California courts extends to the limits set by the state and federal Constitutions. (Code Civ. Proc., § 410.10.) Constitutional due process limits dictate that in the absence of general jurisdiction—which exists only if a corporation is incorporated in the forum state or conducts such intensive activities there as to make it "at home" in that state (*Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 564 U.S. 915, 919 (*Goodyear*))—personal jurisdiction over the corporation to adjudicate a particular claim (specific jurisdiction) is established only if the controversy "is related to or 'arises out of' " the company's activities in the forum state. (*Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 414 (*Helicopteros*).)

The majority's decision is not supported by specific jurisdiction decisions from the United States Supreme Court, this court, or the lower federal and state courts. (See pt. I, *post*.) And as I will discuss later (see pt. II, *post*), today's decision impairs

important functions of reciprocity, predictability, and limited state sovereignty served by the relatedness requirement. By weakening the relatedness requirement, the majority's decision threatens to subject companies to the jurisdiction of California courts to an extent unpredictable from their business activities in California, extending jurisdiction over claims of liability well beyond our state's legitimate regulatory interest.

Just as important, minimizing the relatedness requirement undermines an essential distinction between specific and general jurisdiction. In *Daimler AG v. Bauman* (2014) 571 U.S.___, ___ [187 L.Ed.2d 624, ___, 134 S.Ct. 746, 751], the United States Supreme Court made clear that general jurisdiction—jurisdiction to adjudicate controversies unrelated to the defendant's forum contacts—is not created merely by commercial contacts that are "continuous and systematic" (*Helicopteros, supra*, 466 U.S. at p. 416) but only by contacts so extensive as to render the defendant " 'at home' " in the forum state. (*Daimler, supra*, 187 L.Ed.2d at p. 761.) The majority applies that holding to conclude, correctly, that general jurisdiction is lacking here. (Maj. opn., *ante*, at pp. 13-16.) But by reducing relatedness to mere similarity and joinder, the majority expands specific jurisdiction to the point that, for a large category of defendants, it becomes indistinguishable from general jurisdiction. At least for consumer companies operating nationwide, with substantial sales in California, the majority creates the equivalent of general jurisdiction in California courts. What the federal high court wrought in *Daimler*—a shift in the general jurisdiction standard from the

"continuous and systematic" test of *Helicopteros* to a much tighter "at home" limit—this court undoes today under the rubric of specific jurisdiction.

I. The Case Law Does Not Support Specific Jurisdiction in These Circumstances

Specific jurisdiction over a defendant—jurisdiction to adjudicate a dispute connected to the defendant's contacts with the forum state—depends on the relationship among the defendant, the forum, and the litigation. (*Helicopteros*, *supra*, 466 U.S. at p. 414.) We have summarized the requirements for specific jurisdiction as threefold: (1) the defendant has purposefully availed itself of forum benefits; (2) the controversy arises out of or is otherwise related to the defendant's forum contacts; and (3) the assertion of personal jurisdiction in the particular litigation is reasonable in light of the burdens and benefits of forum litigation. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062 (*Snowney*).)

BMS contests neither the first prong of this tripartite test, that the company has purposefully availed itself of forum benefits by its continuous course of substantial business activities in California, nor the third, that taking jurisdiction would impose unreasonable burdens on the company. (*Snowney*, *supra*, 35 Cal.4th at p. 1070.) The key issue here is therefore whether the claims of the real parties in interest (plaintiffs residing in states other than California) arise out of, or are otherwise related to, BMS's activities in California.

A. *The Relatedness Requirement for Specific Jurisdiction*

The requirement that the litigation be related to the defendant's activities in or directed to the forum, by which it has purposefully availed itself of the benefits of doing business in the state, was first stated in the landmark decision of *Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310 (*International Shoe*). The high court first noted that jurisdiction is well established when a corporation's "continuous and systematic" activities in the state "give rise to the liabilities sued on." (*Id.* at p. 317.) Even when a corporation has engaged in only occasional activities in the state, due process may still be satisfied if those activities have created the obligations sued on: "[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." (*Id.* at p. 319.)

In *International Shoe* itself, the relationship between the forum activities and the litigation was a straightforward one: The defendant corporation had employed salesmen in the State of Washington, which required it contribute to the state's unemployment compensation fund; the litigation concerned an assessment for unpaid contributions. (*International Shoe*, *supra*, 326 U.S. at pp. 312-313.) Thus "the obligation which is here sued upon arose

out of those very [forum] activities," making it reasonable for Washington "to enforce the obligations which appellant has incurred there." (*Id.* at p. 320.)

The United States Supreme Court has not, since *International Shoe*, greatly elaborated on its understanding of the relatedness requirement. The court in *Helicopteros* slightly reformulated the requirement: jurisdiction may be appropriate if the controversy "arise[s] out of or relate[s] to" the company's forum contacts. (*Helicopteros*, *supra*, 466 U.S. at p. 414.) But the high court did not explain or apply that standard in *Helicopteros*, and in *Goodyear*, *supra*, 564 U.S. at page 919, the court again used a different formulation, suggesting a narrower vision of relatedness: "Specific jurisdiction . . . depends on an 'affiliatio[n] between the forum and the underlying controversy,' principally, *activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation*." (Italics added.) The Goodyear court went on, very briefly, to explain why specific jurisdiction did not exist in the case before it, which involved the deaths of two North Carolina boys in an overseas bus accident: "Because the episode-in-suit, the bus accident, occurred in France, and the tire alleged to have caused the accident was manufactured and sold abroad, North Carolina courts lacked specific jurisdiction to adjudicate the controversy." (*Ibid.*) None of the injury-causing events having occurred in the forum state, the basis for specific jurisdiction was lacking.

Of the post-*International Shoe* decisions in which the high court actually found a factual basis for specific jurisdiction, each featured a direct link

between forum activities and the litigation. (See *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 479-480 [specific jurisdiction in Florida courts proper where franchise dispute "grew directly out of" contract formed between Florida franchisor and Michigan franchisee, whose breach "caused foreseeable injuries to the corporation in Florida"]; *Calder v. Jones* (1984) 465 U.S. 783, 789 [California jurisdiction over writer and editor based in Florida proper for article distributed in California and defaming California resident, where the defendants' "intentional, and allegedly tortious, actions were expressly aimed at California" and they knew article "would have a potentially devastating impact" on California resident]; *Keeton v. Hustler Magazine, Inc.* (1984) 465 U.S. 770, 776-777 (*Keeton*) [specific jurisdiction in New Hampshire courts proper over Ohio corporation where corporation's sale in New Hampshire of magazine defaming the plaintiff injured her reputation in that state]; *McGee v. International Life Ins. Co.* (1957) 355 U.S. 220, 223 [specific jurisdiction in California courts proper where action was based on a life insurance contract delivered in California and on which the insured, a California resident at his death, had paid premiums from the state].) Nothing in the high court's specific jurisdiction decisions suggests an abandonment or broad relaxation of the relatedness requirement.

This court did, in *Vons*, adopt a relatively broad standard for relatedness. After canvassing formulations put forward by scholars and lower courts, we held the relationship between the defendant's forum contacts and the plaintiff's claims in litigation need not be one of proximate legal

causation or even "but for" factual causation, nor need the forum contacts be substantively relevant in the plaintiff's action. (*Vons*, *supra*, 14 Cal.4th at pp. 460-475.) Rather, the relationship required for specific jurisdiction exists if the claims bear a "substantial nexus or connection" to the activities by which the defendant has purposefully availed itself of forum benefits. (*Id.* at p. 456; accord, *Snowney*, *supra*, 35 Cal.4th at pp. 1067-1068.) The test is not a mechanical one, but a weighing process in which "the greater the intensity of forum activity, the lesser the relationship required between the contact and the claim." (*Vons*, *supra*, at p. 453; accord, *Snowney*, *supra*, at p. 1068.) Specific jurisdiction in California courts is proper if "because of the defendants' relationship with the forum, it is not unfair to require that they answer in a California court for an alleged injury that is substantially connected to the defendants' forum contacts." (*Vons*, *supra*, at p. 453.)

Notwithstanding our relatively broad substantial connection standard, mere similarity of claims is an insufficient basis for specific jurisdiction. The claims of real parties in interest, nonresidents injured by their use of Plavix they purchased and used in other states, in no sense arise from BMS's marketing and sales of Plavix in California, or from any of BMS's other activities in this state. Nor is any other substantial connection apparent.

BMS promoted and sold Plavix in this state, giving rise to the California plaintiffs' claims. BMS also engaged in such promotion and sales in many other states, giving rise to claims by residents of those states. As all the claims derive from similar conduct and allege similar injuries, the nonresident plaintiffs'

claims closely resemble those made by California residents. But I can perceive no substantial nexus between the nonresidents' claims and BMS's California activities. In each state, the company's activities are connected to claims by those who obtained Plavix or were injured in that state, but no relationship other than similarity runs between the claims made in different states. As BMS argues, its California contacts fail to "intersect" with the nonresident plaintiffs' claims.

Even a commentator "sympathetic to an expanded role for specific jurisdiction" found the approach of the Court of Appeal in this case, which the majority in this court largely replicates, so overly broad as "to reintroduce general jurisdiction by another name." (Silberman, *The End of Another Era: Reflections on Daimler and Its Implications for Judicial Jurisdiction in the United States* (2015) 19 Lewis & Clark L.Rev. 675, 687 (hereafter Silberman).) "A more plausible specific jurisdiction forum might be the state where the drugs were manufactured or distributed to both the California and non-California plaintiffs; all plaintiffs' claims might be said to 'arise from' such defective manufacture and thereby provide an alternative single forum in which to have all the plaintiffs assert their claims. In *Bristol-Meyers* [*sic*], no such connection to California can be established for the non-California plaintiffs. The claims of the California and nonresident plaintiffs are merely parallel." (*Ibid.*, fn. omitted.)

One form of substantial connection between a defendant's forum activities and the claims against it exists when the forum activities are legally relevant to establish the claims. (*Vons, supra*, 14 Cal.4th at

p. 469.) In that situation, the forum state's interest in regulating conduct occurring within its borders is implicated, as the plaintiff is seeking to impose liability, at least in part, for acts the defendant committed in the forum state. (*Id.* at p. 472.) But no such legal relevance connection is apparent here. The nonresident plaintiffs' claims rest on allegations that BMS deceptively marketed and sold Plavix to them or their prescribing physicians, but, as noted earlier, the record is devoid of any suggestion, nor do real parties claim, the nonresident plaintiffs bought or were prescribed Plavix from a California source. BMS's marketing and sales activities in California thus appear irrelevant to real parties' claims. To quote BMS's brief, the nonresident plaintiffs' claims "would be exactly the same if BMS had never set foot in California, had never engaged in any commercial activity in California, had never sold any product here, and had engaged only non-California distributors."

In addition to its interest in regulating conduct within its borders, each state has an interest in providing a judicial forum for its injured residents, regardless of whether the conduct sued on occurred in the state. (*Vons, supra*, 14 Cal.4th at pp. 472-473.) "[T]he state has a legitimate interest as sovereign in providing its residents with protection from injuries caused by nonresidents and with a forum in which to seek redress. This assertion of sovereignty with respect to nonresident defendants is fair when those defendants have availed themselves of certain benefits within the state and the claim is related to those contacts." (*Id.* at p. 473.) But reference to the state's interest in providing a forum

for its residents to seek legal redress is of no help to real parties in interest here, as they are not California residents. California has no discernable sovereign interest in providing an Ohio or South Carolina resident a forum in which to seek redress for injuries in those states caused by conduct occurring outside California. A mere resemblance between the nonresident plaintiffs' claims and those of California residents creates no sovereign interest in litigating those claims in a forum to which they have no substantial connection.

The majority argues that taking jurisdiction over the nonresidents' claims furthers a California interest because evidence of their injuries may be admissible to help the California plaintiffs prove Plavix was a defective product. (Maj. opn., *ante*, at p. 32.) But admissibility of other injuries does not depend on joinder of the other injured person, as the cases the majority cites illustrate. In neither *Ault v. International Harvester* (1974) 13 Cal.3d 113 nor *Elsworth v. Beech Aircraft Corp.* (1984) 37 Cal.3d 540, where evidence of prior similar injuries was held admissible, were those injured in the prior accidents joined as parties in the action.

The majority also suggests that jurisdiction over the nonresidents' claims is proper because California law attempts to "protect[] consumers from the potential dangers posed by prescription medication." (Maj. opn., *ante*, at p. 33.) The statutes cited, however, regulate the dispensing of prescription drugs by California pharmacists (Bus. & Prof. Code, §§ 4070–4078), while the claims at issue in this case are against BMS, a drug manufacturer. Moreover, real parties in interest have neither alleged nor

proven they were prescribed or furnished Plavix in California. How the cited California laws might apply to their claims is thus unclear, to say the least.

In the same passage, the majority implies that the activity of BMS's California sales representatives, whose representations California has an interest in regulating, might somehow be related to real parties' claims. (Maj. opn., *ante*, at p. 33.) In this instance as well, the majority ignores the complete absence of evidence showing any such relationship. Real parties in interest, who have the burden of proving forum contacts related to their claims, have not even attempted to establish that sales representatives in California misled physicians *in other states* about Plavix's efficacy and safety. While no doubt correct California has an interest in regulating dangerous conduct within our state (maj. opn, *ante*, p. 33, fn. 6), the majority neglects to explain how that interest can be served by taking jurisdiction to adjudicate the claims of persons unaffected by any such conduct.

Finally, the majority asserts that California's interest in regulating the conduct of codefendant McKesson Corporation (McKesson), a pharmaceutical distributor headquartered in California, justifies adjudicating real parties' claims against BMS in a California court. (Maj. opn., *ante*, at pp. 33-34.) Of all the majority's red herrings, this is perhaps the ruddiest. Why plaintiffs sued McKesson as well as BMS is not obvious—BMS suggests it was merely to avoid removal to federal court (see 28 U.S.C. § 1441(b)(2))—but at no point have real parties argued McKesson bore any responsibility in providing them with Plavix. In their brief on the merits, real parties contended

BMS's relationship with McKesson helped BMS make substantial profits "within California," and at oral argument their attorney acknowledged he had no evidence tying McKesson to the Plavix that allegedly injured real parties outside this state. The notion of a connection between McKesson's conduct in California and the claims of real parties in interest, which arise from their acquisition and use of Plavix in other states, is purely a product of the majority's imagination.

Notwithstanding the majority's speculative suggestions, as far as the record shows real parties' claims arise solely from conduct in other states and do not implicate California's legitimate interest in regulating conduct within its borders.

B. Jurisdiction Over Liability Claims for Pharmaceutical Drugs

Neither real parties in interest nor the majority cites any decision, state or federal, finding specific jurisdiction on facts similar to those here. In fact, courts in both systems have *rejected* jurisdiction over drug defect claims made by plaintiffs who neither reside in nor were injured by conduct in the forum state.

In *Boaz v. Boyle & Co.* (1995) 40 Cal.App.4th 700 (*Boaz*), a group of plaintiffs, mostly residents of New York and New Jersey, but including one California resident, sued several manufacturers of the drug DES for injuries allegedly resulting from their grandmothers' ingestion of the drug in New York. (*Id.* at p. 704.) The appellate court affirmed the dismissal of the action against defendant Emons Industries, Inc., which was not subject to California's general jurisdiction, holding the basis for specific

jurisdiction was also lacking as the defendant's activities in California were unrelated to the plaintiffs' injuries. (*Id.* at p. 705.) "It is conceded that none of appellants' grandmothers, who ingested DES, did so in California. Nor did any of them acquire the product as the result of any of Emons's activities related to California. Indeed, as we have seen, none of them except [the single California resident] has any connection with this state." (*Id.* at p. 718.) Though the defendant had sold DES in California as it had in other states, that similarity of conduct did not subject it to personal jurisdiction for the purposes of adjudicating the out-of-state plaintiffs' claims, though, as the court noted, jurisdiction might be appropriate "in a case arising out of ingestion in California or by purchase or prescription in California of DES." (*Id.* at p. 721.)[1] As in the present case, none of those facts had been or could be established.

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[1] As to the California resident, the *Boaz* court reasoned jurisdiction was lacking because her grandmother had not taken DES in California and therefore "any DES-related affliction she suffers has nothing to do with any of Emons's activities related to California." (*Boaz*, *supra*, 40 Cal.App.4th at p. 718.) The court may have gone too far in this respect; California's interest in providing a forum for its residents to seek redress for actions having injurious effects in the state arguably justified specific jurisdiction over the California resident's claims. For the same reason, *In re DES Cases* (E.D.N.Y. 1992) 789 F.Supp. 552 can be distinguished as involving the claims of New York residents seeking a remedy for injuries occurring in New York; although the defendants challenging jurisdiction there did not market DES in New York, they bore legal responsibility for injuries there under the state's rule of market share liability. (See *id.* at pp. 592-593.)

Glater v. Eli Lilly & Co. (1st Cir. 1984) 744 F.2d 213, presented a similar fact pattern in an individual suit. The plaintiff there sued a DES manufacturer in a federal court in New Hampshire for injuries she allegedly suffered from *in utero* exposure to the drug. The plaintiff's mother took the drug in Massachusetts, where she lived. (*Id.* at p. 214.) That the manufacturer had marketed DES nationwide, including in New Hampshire, was insufficient to support specific jurisdiction: Although Lilly marketed and sold DES nationwide, including in New Hampshire, "Glater's cause of action did not arise from Lilly's New Hampshire activities; rather, her injuries were caused in Massachusetts by exposure *in utero* to DES which her mother purchased and consumed in Massachusetts." (*Id.* at p. 216.) Were the defendant's New Hampshire contacts deemed sufficiently related to the cause of action arising in Massachusetts, the court "would be obliged to hold that *any* plaintiff in Glater's position—a nonresident injured out of state by a drug sold and consumed out of state—could bring suit in New Hampshire for DES injuries." (*Id.* at p. 216, fn. 4.) Such "retributive jurisdiction" over claims unconnected to the forum "comports with neither logic nor fairness." (*Ibid.*; accord, *Seymour v. Parke, Davis & Company* (1st Cir. 1970) 423 F.2d 584, 585, 587 [suit in New Hampshire over drug taken and allegedly causing injury in Massachusetts "did not arise [in New Hampshire], or as a result of anything which occurred there" and hence was an "unconnected cause[] of action" that could only be justified by general jurisdiction, the basis for which was also lacking].)

Also similar, though less extensively reasoned as to specific jurisdiction, is *Ratliff v. Cooper Laboratories, Inc.* (4th Cir. 1971) 444 F.2d 745. That decision addressed two consolidated cases brought in a federal court in South Carolina, both by residents of other states who bought and consumed the allegedly harmful drugs (not named in the decision), against drug manufacturers that conducted business in South Carolina but were not incorporated or headquartered there and had not made the subject drugs there. (*Id.* at p. 746.) The court observed that the plaintiffs were not residents of South Carolina and their causes of action —arose outside the forum and were unconnected with the defendant's activities in South Carolina." (*Id.* at p. 747.) Noting "the lack of a 'rational nexus' between the forum state and the relevant facts surrounding the claims presented" such as would support specific jurisdiction, the court moved on to general jurisdiction (for which it also found the forum contacts insufficient). (*Id.* at p. 748.)

In all these cases, the defendants had sold their pharmaceutical drugs in the forum state. Indeed, in *Boaz*, California physicians accounted for 9 percent of the defendant's DES sales. (*Boaz*, *supra*, 40 Cal.App.4th at p. 715.)[2] Yet these courts—

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[2] The majority (maj. opn., *ante*, at p. 25) notes that the defendant in Boaz, unlike BMS, did not employ salespeople or maintain offices in the state. Yet through "advertising in selected professional magazines and professional journals, and targeted mailings of samples and brochures to obstetricians and gynecologists," all "done on a national scale" (*Boaz*, *supra*, 40 Cal.App.4th at p. 715), the company sold a large amount of DES—the same product at issue in the disputed lawsuits—in California. Like BMS, then, the defendant in *Boaz* "enjoyed

correctly, in my view—considered that forum activity to be unconnected to the plaintiffs' claims, which arose from use of the drugs in other states. Not until today's decision has specific jurisdiction over a drug liability claim arising from the nonresident plaintiff's purchase, use, and injury *outside* the forum state been premised on the fact that the defendant also sold the drug in the forum state.

C. Specific Jurisdiction Decisions Relied on by Real Parties

Turning from pharmaceutical liability to the broader case law, we see that none of the decisions real parties cite support specific jurisdiction based, as here, on the mere *resemblance* between the disputed claims and distinct claims brought by other plaintiffs that arose from the defendant's forum contacts. Each of these cited cases involved a substantial connection between the defendant's activities in the forum state and the plaintiff's claims, not merely a connection between the forum activities and similar claims made by other plaintiffs.

In *Cornelison v. Chaney* (1976) 16 Cal.3d 143 (*Cornelison*), a California resident sued for the wrongful death of her husband, who died in an automobile accident in Nevada. The defendant, a Nebraska resident, was a trucker hauling goods in interstate commerce. He made approximately 20 trips to California each year and was en route to this state with a shipment when his truck collided with

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sizeable revenues from the sales of its product here." (Maj. opn., *ante*, at p. 26.) Why the absence of other, dissimilar ties should serve to distinguish the case is unclear.

the decedent's vehicle in Nevada, near the California border. (*Id.* at pp. 146-147.)

We concluded the plaintiff's cause of action did bear a substantial connection to the defendant's business activities in California: "As we have seen, defendant has been engaged in a continuous course of conduct that has brought him into the state almost twice a month for seven years as a trucker under a California license. The accident occurred not far from the California border, while defendant was bound for this state. He was not only bringing goods into California for a local manufacturer, but he intended to receive merchandise here for delivery elsewhere. The accident arose out of the driving of the truck, the very activity which was the essential basis of defendant's contacts with this state. These factors demonstrate, in our view, a substantial nexus between plaintiff's cause of action and defendant's activities in California." (*Cornelison*, *supra*, 16 Cal.3d at p. 149.) In further support, we observed that California had an interest in providing a forum for the litigation because the plaintiff was a California resident. (*Id.* at p. 151.)

Cornelison has in common with the present case that the plaintiff's injury arose directly from the defendant's conduct outside California. But in *Cornelison* the defendant's out-of-state conduct, his allegedly negligent driving in Nevada, was directed (literally) toward California and resulted in injury to a California resident. The connections to California that justified jurisdiction in *Cornelison* are missing from the claims of real parties in interest here.

In *Vons*, *supra*, 14 Cal.4th 434, we held specific jurisdiction proper over two restaurant franchisees

based and operating in Washington State. In multiparty litigation arising out of food poisoning incidents at their and other Jack-in-the-Box restaurants, the supplier of the allegedly tainted meat (Vons Companies, Inc. (Vons)) cross-complained against several franchisees, including the Washington franchisees, alleging their failure to cook the meat properly caused the poisoning. (*Id.* at pp. 440-441.) Among other contacts with California, the franchisees had executed the franchise agreements, which specified methods of preparing Jack-in-the-Box food products, in California, did regular business with the franchisor at its headquarters in San Diego, and had officers attend training sessions offered by the franchisor in California. (*Id.* at pp. 442-443.)

We held Vons's claims against the franchisees bore a substantial relationship to their contacts with California for two reasons: first, the franchise relationship—formed in California, under which the franchisees bought meat Vons supplied to the franchisor—had drawn Vons and the franchisees into a relationship as alleged joint tortfeasors, with certain joint liabilities and rights of indemnification, rights upon which Vons' cross-complaint in part rested; second, the franchise relationship, by imposing uniform standards for cooking food, buying equipment, and training employees, was itself an alleged source of Vons' injuries, which Vons traced to the " 'systematically deficient' " procedures required by the franchisor. (*Vons*, *supra*, 14 Cal.4th at pp. 456–457.)

Real parties in interest rely on *Vons* for the propositions that for specific jurisdiction to be

justified the defendant's forum activities need not be directed at the plaintiff or directly give rise to the plaintiff's claims. (See *Vons, supra*, 14 Cal.4th at pp. 453, 457.) Both points are well taken. Nonetheless, in *Vons* the connection between the forum activities and the claim was far more substantial than in the present case. By their activities in California, including the formation of franchise relationships, the franchisees in *Vons* established the conditions that would ultimately allow the franchisor's meat supplier, Vons, to seek indemnity for their joint liability and redress for its own injuries. The franchisees' forum activities were not directed at Vons, with which they had no direct relationship, and may not have proximately given rise to Vons's claims, but by establishing a franchise relationship pursuant to which the franchisees bought Vons's meat and prepared it according to methods set out in the franchise agreement, they set the stage for those claims, to say the least. No such nexus is apparent here, where BMS's marketing and sales of Plavix in California did nothing to establish the circumstances under which it allegedly injured plaintiffs in other states.

Finally as to California cases, real parties in interest cite *Snowney, supra*, 35 Cal.4th 1054, in which we held a California resident could sue a group of Nevada hotels in a California court for the hotels' failure to provide notice that they would impose an energy surcharge on their room prices. (*Id.* at p. 1059.) In a relatively brief discussion of the relatedness issue (the bulk of our analysis concerned the question of purposeful availment), we held the plaintiff's claims had a substantial connection to the

defendants' California forum activities because the plaintiff's false advertising and unfair competition claims were based on the hotels' alleged omissions in their California advertising and in the reservation process. (*Id.* at p. 1068.) "Because the harm alleged by plaintiff relates directly to the content of defendants' promotional activities in California, an inherent relationship between plaintiff's claims and defendants' contacts with California exists." (*Id.* at p. 1069.)

Real parties rely on *Snowney* for its adherence to the substantial connection test articulated in *Vons* and for its reiteration of *Vons*'s statements that the required intensity of forum contacts and connection of the claim to those contacts are inversely related (the greater the contacts, the less of a relationship need be shown) and that the forum contacts need not be directed at the plaintiff or give rise directly to the plaintiff's claim. (See *Snowney*, *supra*, 35 Cal.4th at p. 1068.) I find those principles unavailing in this case. However intense the defendant's activities in California, they must still bear a substantial relationship to the plaintiff's claims, and neither *Snowney* nor any of the other decisions real parties cite suggests that a mere resemblance between the plaintiff's claims and those made by other plaintiffs that are based on the defendant's California contacts establishes a substantial connection.

Cornelison, *Vons* and *Snowney* establish that we do not demand the relationship between the defendant's California contacts and the plaintiff's claims be causal or direct. They do not, however, support specific jurisdiction on the tenuous basis of a *resemblance* to other claims by other plaintiffs. (See

Greenwell v. Auto-Owners Ins. Co. (2015) 233 Cal.App.4th 783, 801 [*Vons* and *Snowney* require a *substantial* connection between the plaintiff's claims and the defendant's forum contacts; test is not satisfied whenever there is "*any relationship at all*"].)

In *Keeton*, *supra*, 465 U.S. 770, the United States Supreme Court upheld the assertion of specific jurisdiction in New Hampshire to adjudicate the libel claims of a New York resident against an Ohio corporation with its principal place of business in California. (*Id.* at pp. 772-774.) The high court found the defendant's regular circulation of magazines in New Hampshire was sufficient to support the state's jurisdiction over a libel claim based on the magazine's contents, even though the plaintiff could, under the " 'single publication rule' " followed in New Hampshire, recover damages from publication of the magazine throughout the United States. (*Id.* at pp. 773-774.) The court emphasized that the plaintiff was suing, in part, for damages she suffered in New Hampshire, "[a]nd it is beyond dispute that New Hampshire has a significant interest in redressing injuries that actually occur within the State." (*Id.* at p. 776.)

Unlike the plaintiff in *Keeton*, real parties in interest suffered no injury in California or from BMS's conduct in California. They nonetheless argue *Keeton* is analogous because the plaintiff there sought recovery, in large part, for injuries incurred outside the forum state. For two reasons, however, the analogy does not hold.

First, the single publication rule at work in *Keeton* was a state law rule governing the measure of damages for defamation, not one governing the

joinder of claims or claimants. The propriety of that state law damages rule was not itself a jurisdictional issue; rather, the question was whether personal jurisdiction in New Hampshire violated due process *given* the state's single publication rule (and its unusually long statute of limitations). (*Keeton*, *supra*, 465 U.S. at pp. 773-774.) In contrast, BMS's motion to quash service of summons as to the claims of the nonresident plaintiffs directly presents the jurisdictional issue as to those plaintiffs. We ask whether the superior court may take jurisdiction over defendant to adjudicate those claims, and are not required to decide whether the *entire* suit, including the claims of the California residents, would be subject to dismissal for lack of jurisdiction if the nonresidents' claims were included in it.

Second, New Hampshire had an interest in adjudicating the out-of-state damages that does not translate to the factual context of this case. (See *Keeton*, *supra*, 465 U.S. at p. 777.) To prevent the extraordinary burden on courts and litigants of having a defamation plaintiff sue separately in 50 states—and to allow effective application of a statute of limitations for publications that continue or recur over lengthy periods—most states have adopted the single publication rule, allowing only a single action per publication, but one in which all damages from the publication may be recovered. (See Civ. Code, § 3425.3 [Cal. Uniform Single Publication Act]; *Christoff v. Nestlé USA, Inc.* (2009) 47 Cal.4th 468, 477-479; see also *Keeton*, *supra*, at p. 778.)

On the facts of this case, there is no analogous state interest of similar force that would justify California courts adjudicating the nonresident

plaintiffs' claims. This is not a case in which the individual California plaintiffs would be stymied by procedural obstacles or restrictive damages rules were the nonresidents excluded from the action. Plaintiffs allege they suffered "severe physical, economic and emotional injuries" from their use of Plavix, including bleeding ulcers, gastrointestinal bleeding, cerebral bleeding, heart attack and stroke. Even if some of the California plaintiffs might have individual claims too small to justify suit, the consolidation of scores of such claims from within California would remedy that insufficiency without the addition of hundreds of nonresidents' claims. California can thus provide an effective forum for its residents to seek redress without joining those claims to similar claims by nonresidents. Nor does this case raise the specter of a continually restarting statute of limitations that would subject defendants like BMS to the harassment of unending suits for the same conduct (see *Christoff v. Nestlé USA, Inc.*, *supra*, 47 Cal.4th at p. 478), as was the case with the defamation suit in *Keeton*.

The majority argues jurisdiction over nonresidents' claims is justified by the efficiencies of litigating all claims arising from a "mass tort" in a single forum and by the existence of a complex litigation division in San Francisco Superior Court "well suited to expeditiously handle such large cases." (Maj. opn., *ante*, at pp. 35, 34.) If these 678 plaintiffs were all the injured Plavix users in the United States, and the only options for the nonresident plaintiffs were participation in this action or individual actions in their home states, then joint proceedings in California would likely be the most efficient

procedure, though the extent of that efficiency would depend on how choice of law questions are resolved, among other factors. (See Silberman, *supra*, 19 Lewis & Clark L.Rev. at p. 687 ["As for the efficiency arguments relied on by the California appeals court, only the issue of the defective quality of the drug is common to all the claims."].)

But these plaintiffs do not constitute the entire universe of those claiming injury from Plavix—far from it—and real parties' options are not limited to joining this action or each bringing separate actions in their respective states. In addition to consolidated multidistrict federal litigation in the District of New Jersey, individual, mass or representative actions have been brought in several other states.[3] Whether

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[3] See *In re Plavix Marketing, Sales Practices and Products Liability Litigation (No. II)* (U.S. Jud. Panel Multidist. Litig. 2013) 923 F.Supp.2d 1376, 1379-1381 (centralizing in District of New Jersey litigation arising in that state and in Illinois, Iowa, Louisiana, New York, and Pennsylvania, and potentially centralizing additional actions from California and Mississippi); *Mills v. Bristol-Myers Squibb Co.* (D.Ariz., Aug. 12, 2011, No. CV 11-968-PHX-FJM) 2011 WL 3566131, at *1 (individual action); *Hawaii ex rel. Louie v. Bristol-Myers Squibb Co.* (D.Hawaii, Aug. 5, 2014, No. CIV. 14-00180 HG-RLP) 2014 WL 3865213, at *2 (parens patriae action brought by the Attorney General of Hawaii remanded to state court); *Davidson v. Bristol-Myers Squibb Co.* (S.D.Ill., Apr. 13, 2012, No. CIV. 12-58-GPM) 2012 WL 1253165, at *5 (action by 83 plaintiffs remanded to state court); *Boyer v. Bristol-Myers Squibb Co.* (S.D.Ill., Apr. 13, 2012, No. CIV. 12-61-GPM) 2012 WL 1253177, at *5 (same, as to action by 71 plaintiffs); *Anglin v. Bristol-Myers Squibb Co.* (S.D.Ill., Apr. 13, 2012, No. CIV. 12-60-GPM) 2012 WL 1268143, at *5 (same, as to action by 67 plaintiffs); *Tolliver v. Bristol-Myers Squibb Co.* (N.D.Ohio, July 30, 2012, No. 1:12 CV 00754) 2012 WL 3074538, at *1 (individual action); *Employer Teamsters-Local Nos. 175/505 Health and Welfare*

or not real parties' claims are heard together with those of the California plaintiffs, inefficiency and the potential for conflicting rulings will exist so long as actions are simultaneously pending in several state and federal courts. (See generally Miller, *Overlapping Class Actions* (1996) 71 N.Y.U. L.Rev. 514, 520-525.)

No mechanism exists for centralizing nationwide litigation in a state court; there is no means by which pending actions in Illinois courts, for example, can be transferred to a California court. The San Francisco Superior Court, no matter how well equipped for trying complex cases, cannot adjudicate the entire dispute between injured Plavix users and BMS. If efficiency is the goal, federal litigation centralized through the multidistrict procedure offers a more promising path than a series of uncoordinated state and federal court actions.

Keeton, in which jurisdiction was found proper despite a state law rule allowing damages for out-of-state injuries, thus fails to support real parties' contention that jurisdiction over litigation brought by nonresident plaintiffs whose claims arose in other states may be obtained by joining their cases to similar ones brought by California plaintiffs. Such jurisdiction by joinder, moreover, would run counter to the holding of *Hanson v. Denckla* (1958) 357 U.S. 235 (*Hanson*).

In *Hanson*, the high court held a Florida court considering the validity of a trust created in

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Trust Fund v. Bristol-Myers Squibb Co. (S.D.W. Va. 2013) 969 F.Supp.2d 463, 466 (action by third party payors alleging misleading and false marketing of Plavix).

Delaware did not have personal jurisdiction over the Delaware trustee, who had performed no relevant acts in Florida (357 U.S. at p. 252),[4] even though other parties to the dispute resided in Florida and could be brought before the Florida court: "It is urged that because the settlor and most of the appointees and beneficiaries were domiciled in Florida the courts of that State should be able to exercise personal jurisdiction over the nonresident trustees. This is a non sequitur. With personal jurisdiction over the executor, legatees, and appointees, there is nothing in federal law to prevent Florida from adjudicating concerning the respective rights and liabilities of those parties. But Florida has not chosen to do so. As we understand its law, the trustee is an indispensable party over whom the court must acquire jurisdiction before it is empowered to enter judgment in a proceeding affecting the validity of a trust. It does not acquire that jurisdiction by being the 'center of gravity' of the controversy, or the most convenient location for litigation." (*Id.* at p. 254, fn. omitted.)

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[4] The majority's account of *Hanson* as resting solely on the purposeful availment prong of the specific jurisdiction test (maj. opn., *ante*, at p. 26, fn. 3) is incomplete. The trust settlor in *Hanson* had moved to Florida after establishing the trust; the trustee then paid the settlor trust income in that state and received from her directions for trust administration, including the execution of two powers of appointment. (*Hanson*, *supra*, 357 U.S. at p. 252 & fn. 24.) But because the litigation concerned the validity of the trust agreement itself (*id.* at p. 253), the cause of action was "not one that arises out of an act done or transaction consummated in the forum State." (*Id.* at p. 251.) *Hanson*'s holding was thus based on the lack of a relationship between the litigation and the defendant's forum contacts as well as on the paucity of those contacts.

It is likewise a non sequitur to argue that because many Californians have sued BMS for injuries allegedly caused by their use of Plavix, and the superior court's jurisdiction to address their claims is not disputed, the claims of nonresidents injured in other states should also be adjudicated here. California might or might not be an especially convenient and efficient forum for nationwide Plavix litigation, but joinder of California plaintiffs cannot confer personal jurisdiction over BMS to adjudicate claims that do not arise out of, and are not otherwise related to, BMS's business activities in California.

The majority posits two bases for deeming BMS's California activities related to the nonresident plaintiffs' claims. First, despite a silent factual record on this point, the majority infers that BMS employed the "same . . . assertedly misleading marketing and promotion" in California as in the states where real parties resided and were allegedly injured.[5] (Maj. opn., *ante*, at p. 23.) I have shown above that neither the case law nor an analysis of forum state interests supports basing specific jurisdiction on a similarity between activities in the forum state and those outside the forum. Characterizing BMS's multistate marketing activities as "coordinated" (maj. opn., *ante*, at p. 24) adds nothing to the jurisdictional argument given that, as the majority concedes, the record shows BMS's marketing campaign for Plavix was

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[5] Despite relying on BMS's nationwide marketing of Plavix as a basis for jurisdiction, and despite bearing the burden of proof on contacts and relatedness, real parties in interest introduced no evidence of particular marketing materials or broadcasts deployed in any state.

coordinated from New York and New Jersey rather than from California. The majority's supposition that California courts have personal jurisdiction over an out-of-state defendant to adjudicate a claim arising from deceptive advertising in, say, Maryland because the defendant used a common marketing strategy in California, Maryland and other states is without rational foundation.

Nor does calling BMS's nationwide marketing of Plavix a "course of conduct" (maj. opn., *ante*, at pp. 24, 25, 36) advance the majority's cause. As already noted (fn. 5, *ante*), real parties introduced no evidence of marketing materials or broadcasts used in any state. Other than that some degree of commonality existed, which BMS conceded, the extent of marketing overlap among the states is simply unknown. Certainly, this record provides no basis for assuming that real parties and the California plaintiffs were all injured by a single television broadcast made simultaneously in every media market or a single print advertisement published simultaneous in newspapers and magazines throughout the nation. This is not a case, that is to say, of a single act injuring plaintiffs in multiple states at one blow, where the argument for common jurisdiction might be stronger. All that appears is that Plavix was marketed nationwide and that BMS may have used many of the same materials—none of them generated in California—in various states. Such similarity of causes is not sufficient to give our courts jurisdiction over all claims, wherever they arise, based on misrepresentations or omissions in a company's marketing materials.

Second, the majority notes that BMS maintains some research facilities in California, although the majority concedes Plavix was not developed in those facilities.[6] (Maj. opn., *ante*, at p. 24.) This second ground of relatedness is both illogical and startling in its potential breadth. Because BMS has performed research on other drugs in California, claims of injury from Plavix may, according to the majority, be adjudicated in this state. Will we in the next case decide that a company may be sued in California for dismissing an employee in Florida because on another occasion it fired a different employee in California, or that an Illinois resident can sue his automobile insurer here for bad faith because the defendant sells health care policies in the California market? The majority points to no substantial connection between Plavix claims arising in other states and research on unspecified other products in this state.

II. The Relatedness Requirement Serves Important Functions and Should Not Be Minimized

As shown in part I, *ante*, the case law on specific jurisdiction does not support a California court taking jurisdiction over nonresident plaintiffs' claims, arising from their use of Plavix in other states. BMS marketed and sold Plavix to other plaintiffs within

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[6] This is not a matter of the absence of evidence. In support of its motion to quash service, a BMS executive submitted a declaration stating that "none of the work to develop Plavix took place in California," and that all development, manufacture, labeling, and marketing of Plavix was performed or directed from New York or New Jersey; none was accomplished or directed by California employees.

California, but those forum activities are not substantially related to the nonresident plaintiffs' claims. In the absence, however, of any United States Supreme Court decisions closely on point, stare decisis does not prevent the majority from giving the relatedness requirement scant consideration, while relying on its theory that the asserted benefits of consolidating multistate claims in California outweigh the burdens for BMS of defending real parties' claims here together with those of the California plaintiffs. (Maj. opn., *ante*, at pp. 29-35.) Nevertheless, this approach is, in my view, a serious mistake. By essentially ignoring relatedness and merely satisfying itself that defendant is not being haled into an inconvenient forum where it has no significant contacts, the majority blurs the distinction between general and specific jurisdiction and impairs the values of reciprocity, predictability, and interstate federalism served by due process limits on personal jurisdiction.

Reciprocity, in this context, refers to the idea that the litigation to which a defendant is exposed in a particular forum should bear some relationship to the benefits the company has sought by doing business in the state. (See Moore, *The Relatedness Problem in Specific Jurisdiction* (2001) 37 Idaho L.Rev. 583, 599 ["The party has garnered the benefits offered by the government in which the court sits. These benefits include the laws, the administrative framework and their restraining effects. In return, the party concedes to that government a quantum of power to govern his conduct, a power which he himself holds in a natural autonomous state."].) Such reciprocity is most

clearly maintained by the state taking jurisdiction over disputes arising directly from the defendant's activities in the state. As the high court said in *International Shoe*, where "[t]he obligation which is . . . sued upon arose out of those very activities," it will generally be "reasonable and just . . . to permit the state to enforce the obligations which appellant has incurred there." (*International Shoe*, *supra*, 326 U.S. at p. 320.)

More broadly, enforcing a meaningful relatedness requirement ensures some degree of reciprocity; because the forum's assertion of jurisdiction cannot encompass disputes that have no substantial connection with the defendant's forum activities, the liabilities to which the defendant is exposed in the forum will tend to bear a relationship to the benefits it has sought in doing business there. "Relationship helps test whether the benefits and burdens are similar. When a suit concerns the activities from which the corporation received in-state benefits, there is some similarity in the burden imposed by the assertion of jurisdiction. . . . Relatedness may be a rough measure, but it placed a logical limit on the burdens arising from in-state activities." (Andrews, *The Personal Jurisdiction Problem Overlooked in the National Debate About "Class Action Fairness"* (2005) 58 SMU L.Rev. 1313, 1345-1346 (hereafter Andrews).)

Relatedness bears on predictability in much the same way. "In order for a business to properly structure its behavior—set consumer costs, procure insurance, or sever its relationship with a particular state—it must not only know that a contact has been made in a particular state (an aim protected through

the purposeful availment standard), but it also must have some minimal appreciation of the effect of that contact. The relationship standard helps give this knowledge. If a business entity chooses to enter a state on a minimal level, it knows that under the relationship standard, its potential for suit will be limited to suits concerning the activities that it initiates in the state." (Andrews, *supra*, 58 SMU L.Rev. at p. 1346; see *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297 (*World-Wide Volkswagen*) [observing that when a corporation sells its products in a state, "it has clear notice that it is subject to suit there," and jurisdiction over a suit would not be unreasonable "if its allegedly defective merchandise has there been the source of injury to its owner or to others."].)

Finally, limiting specific jurisdiction to litigation that is substantially connected to the defendant's forum activities prevents states from straying beyond their legitimate regulatory spheres. Appropriately limited, specific jurisdiction "acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." (*World-Wide Volkswagen*, *supra*, 444 U.S. at p. 292.) As the high court explained in Hanson, the growth in interstate commerce and the easing of communications and transportation may have tempered, but they have not eliminated, the role that territorial limits on state regulation play under due process. Due process restrictions on personal jurisdiction "are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of

the respective States." (*Hanson*, *supra*, 357 U.S. at p. 251.)

Expanding on this point in *World-Wide Volkswagen*, the court explained that while the Constitution's Framers foresaw a nation of economically interdependent states, they "also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment." (*World-Wide Volkswagen*, *supra*, 444 U.S. at p. 293.) Thus even in the modern era due process limits on personal jurisdiction retain a territorial aspect: "Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." (*Id.* at p. 294; accord, *J. McIntyre Machinery, Ltd. v. Nicastro* (2011) 564 U.S. 873, 879 (plur. opn. of Kennedy, J.) ["The Due Process Clause protects an individual's right to be deprived of life, liberty, or property only by the exercise of lawful power. . . . This is no less true with respect to the power of a sovereign to resolve disputes through judicial process than with

respect to the power of a sovereign to prescribe rules of conduct for those within its sphere."].)[7]

The relatedness requirement for specific jurisdiction plays a key role in implementing these interstate federalism limits. By conducting business within a state or directing its efforts at the state, a company brings its activities within the state's core regulatory concerns. Litigation that arises from those activities falls squarely within the state's sovereign power to adjudicate. In contrast, litigation arising outside the state is unlikely to be a fit subject for state court adjudication except to the extent it involves state residents. "A state has sovereignty with regard to activity conducted within its borders, and it thus has power over claims arising from that activity. . . . A state seemingly has no sovereignty over activity that neither involves its citizens nor occurs within its borders." (Andrews, *supra*, 58 SMU L.Rev. at p. 1347.) Relatedness thus "helps limit the reach of states so that they do not exceed legitimate state interests." (*Id.* at p. 1348.) As this court remarked (in a choice of law discussion, but with equal applicability to jurisdiction), our state's

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[7] In *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee* (1982) 456 U.S. 694, 703, footnote 10, the high court noted that concern for federalism is not "an independent restriction on the sovereign power of the court," but rather "a function of the individual liberty interest preserved by the Due Process Clause," waivable by the party. Though not an independent, unwaivable restriction on jurisdiction, interstate federalism remains an important consideration in determining how the due process limits on jurisdiction should be applied. "The defendant has a due process right to have states act only within the limits of their sovereignty." (Andrews, *supra*, 58 SMU L.Rev. at p. 1347.)

legitimate regulatory interest does not ordinarily extend to measures aimed at "alter[ing] a defendant's conduct in another state vis-à-vis another state's residents." (*Kearney v. Salomon Smith Barney, Inc.* (2006) 39 Cal.4th 95, 104, italics omitted.)

Basing specific jurisdiction on mere similarity between a corporation's forum activities and those outside the state, as the majority does in this case, defeats the relatedness requirement's functions of reciprocity, predictability, and interstate federalism. If BMS must answer in a California court for Plavix claims arising across the country simply because some Californians have made similar claims, the link between the benefits BMS has sought by doing that business in the state and the liabilities to which it is exposed here has been severed. In the same way, predictability has been severely impaired, as the company's potential liabilities cannot be forecast from its state activities. And interstate federalism is perhaps most directly impaired; by taking jurisdiction to adjudicate a dispute arising only from BMS's actions in, for example, Texas, and allegedly resulting in injuries only to a Texan, the California courts infringe directly on Texas's sovereign prerogative to determine what liabilities BMS should bear for actions in its borders and injuring its residents. "[T]he forum state arguably exceeds its sovereignty when it asserts jurisdiction over claims that are merely similar to activities within its borders, as opposed to causally connected to the forum conduct." (Andrews, *supra*, 58 SMU L.Rev. at pp. 1354-1355.)

For decades, commentators have rejected similarity as an adequate criterion of connection or relatedness, recognizing that its excessive breadth would create jurisdiction in every state for every breach by a national corporation, wherever it occurred. "Thus the similarity test would apparently have to allow jurisdiction in any State in the country where the defendant has engaged in similar activities." (Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction* (1980) Sup.Ct.Rev. 77, 84; accord, Rhodes & Robertson, *Toward a New Equilibrium in Personal Jurisdiction* (2014) 48 U.C. Davis L.Rev. 207, 242 [allowing specific jurisdiction "in every forum in which the defendant conducts continuous and systematic forum activities that are sufficiently similar to the occurrence in dispute . . . would give the plaintiff the choice of essentially every state for proceeding against a national corporation"].) Today, the majority, by holding the presence of California plaintiffs with claims similar to those of real parties in interest constitutes a substantial connection between real parties' claims and BMS's California activities, effectively sanctions California courts taking jurisdiction over actions by plaintiffs throughout the nation alleging injuries from any nationwide business activity.

As California holds a substantial portion of the United States population, any company selling a product or service nationwide, regardless of where it is incorporated or headquartered, is likely to do a substantial part of its business in California. Under the majority's theory of specific jurisdiction, California provides a forum for plaintiffs from any

number of states to join with California plaintiffs seeking redress for injuries from virtually any course of business conduct a defendant has pursued on a nationwide basis, without any showing of a relationship between the defendant's conduct in California and the nonresident plaintiffs' claims. The majority thus sanctions our state to regularly adjudicate disputes arising purely from conduct in other states, brought by nonresidents who suffered no injury here, against companies who are not at home here but simply do business in the state.

Such an aggressive assertion of personal jurisdiction is inconsistent with the limits set by due process. Although those limits are more flexible and less strictly territorial than in the past, the high court has explained that they still act to keep any one state from encroaching on the others: "[W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution." (*World-Wide Volkswagen*, *supra*, 444 U.S. at p. 293.) That BMS marketed and sold Plavix throughout the United States, presumably using much of the same advertising in many markets, does not give California authority, under our federal system, to assert jurisdiction over claims arising throughout the nation. Speaking of the limits to jurisdiction set by interstate federalism, the court in *Boaz*—also involving a pharmaceutical drug marketed throughout the nation—observed: "We have no warrant to jettison these principles in favor of an approach which recognizes no defined limits to the assertion of jurisdiction against any defendant whose

national marketing somehow affects commerce in the forum state." (*Boaz*, *supra*, 40 Cal.App.4th at p. 721.)

Assessing the fairness of specific jurisdiction " 'in the context of our federal system of government' " (*World-Wide Volkswagen*, *supra*, 444 U.S. at pp. 293–294), we should be restrained here by the absence of any discernable state interest in adjudicating the nonresident plaintiffs' claims. Where the conduct sued upon did not occur in California, was not directed at individuals or entities in California, and caused no injuries in California or to California residents, neither our state's interest in regulating conduct within its borders (*Vons*, *supra*, 14 Cal.4th at p. 472) nor its interest in providing a forum for its residents to seek redress for their injuries (*id.* at p. 473) is implicated. On the critical question of why a Texan's claim he was injured in Texas by taking Plavix prescribed and sold to him in Texas should be adjudicated in California, rather than Texas (or in Delaware or New York, BMS's home states), the majority offers no persuasive answer.

CONCLUSION

Like the majority, I conclude BMS, despite its significant business activities in California, is not at home in our state for purposes of asserting general personal jurisdiction over it. But neither, in my view, is specific jurisdiction over the nonresident plaintiffs' claims proper. No substantial connection has been shown between BMS's activities in California and the nonresidents' claims, which arose out of BMS's marketing and sales of Plavix in other states.

For this reason, I respectfully dissent.

Filed: August 29, 2016

WERDEGAR, J.

WE CONCUR:

CHIN, J.
CORRIGAN, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion Bristol-Myers Squibb Company v. Superior Court

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Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 228 Cal.App.4th 605
Rehearing Granted

Opinion No. S221038
Date Filed: August 29, 2016

Court: Superior
County: San Francisco
Judge: John E. Munter

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APPENDIX B

THE COURT OF APPEAL FOR THE
FIRST DISTRICT, DIVISION 2
CALIFORNIA

No. A140035

BRISTOL-MYERS SQUIBB COMPANY

Petitioner,

v.

THE SUPERIOR COURT OF
SAN FRANCISCO COUNTY,

Respondent;

BRACY ANDERSON et al.,

Real Parties in Interest.

Trial Court: Superior Court of San Francisco County, Trial Judge: Hon. John E. Munter

Arnold & Porter, Sean M. SeLegue, Sharon D. Mayo, Jeremy McLaughlin, Steven G. Reade, Maurice A. Letter, Attorneys for Petitioner

Donald M. Falk, Attorney for Amicus Curiae Chamber of Commerce of the United States of America in support of Petitioner

Napoli Bern Ripka Shkolnik, LLP, Hunter J. Shkolnik, Jessica Y. Lee, Shayna E. Sacks, Attorneys for Real Parties in Interest Bracy Anderson, et al.

J. Burton LeBlanc, Andrus Anderson LLP, Lori E. Andrus, Jenny Lee Anderson, Law Offices of Collyn A. Peddie, Collyn A. Peddie, Attorneys for Amicus Curiae American Association for Justice in support of Real Parties in Interest

Robbins Geller Rudman & Dowd LLP, Kevin K. Green, Attorney for Amicus Curiae Consumer Attorneys of California in support of Real Parties in Interest

Brick, J.*

This case calls upon us to decide whether California has personal jurisdiction over a nonresident corporate defendant on unique facts. Deendant Bristol–Myers Squibb Company (BMS) has been sued by dozens of California residents in a coordinated proceeding before the San Francisco Superior Court. They allege defects in Plavix, a drug BMS manufactures and sells throughout the country. Jurisdiction over BMS as to these plaintiffs is conceded. The question presented is whether California also has jurisdiction over BMS regarding identical Plavix defects claims brought by hundreds of non-resident co-plaintiffs, the real parties in interest here (RPI), in the same coordinated proceeding, consistent with the Due Process Clause of the Fourteenth Amendment.

BMS moved below to quash service of the summons regarding the RPI's complaints for lack of personal jurisdiction. The RPI argued that California has jurisdiction over BMS, whether it be general, that is,

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* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

jurisdiction over claims unrelated to the forum state, or specific, that is, jurisdiction based upon the relationship of the RPI claims, BMS, and California. The trial court denied BMS's motion based on its conclusion that California has general jurisdiction over BMS, and did not address the issue of specific jurisdiction.

BMS filed a petition for writ of mandate in this court to reverse the trial court's ruling. We summarily denied this petition. However, on the same day that we did so, the United States Supreme Court issued *Daimler AG v. Bauman* (2014) ___ U.S. ___ [134 S.Ct. 746] (*Daimler*), which limited the application of general jurisdiction under the Fourteenth Amendment. Our own Supreme Court then granted BMS's petition for review and transferred the matter back to us for further consideration. Upon our review of the parties' further briefing and *Daimler*, we conclude California does not have general jurisdiction over BMS based upon the facts of this case.

This does not end our inquiry, however. Although the trial court did not address the issue of specific jurisdiction, we do so now because the underlying facts we rely upon are undisputed. In order to resolve this issue, we apply the time-honored test for the application of specific jurisdiction adopted by the United States Supreme Court in *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 (*International Shoe*) and reaffirmed by it and the California Supreme Court over the past 65 years in order to determine whether such jurisdiction is consistent with the traditional conception of " 'fair play and substantial justice.' " (*Daimler*, *supra*,

134 S.Ct. at p. 754.) Having done so, we conclude that BMS has engaged in substantial, continuous economic activity in California, including the sale of more than a billion dollars of Plavix to Californians. That activity is substantially connected to the RPI's claims, which are based on the same alleged wrongs as those alleged by the California resident plaintiffs. Further, BMS does not establish it would be unreasonable to assert jurisdiction over it. Therefore, we conclude that it is consistent with due process to require BMS to defend the RPI's claims before the trial court in coordination with the claims of the California resident plaintiffs. Accordingly, we affirm the trial court's order denying the motion to quash based upon the doctrine of specific jurisdiction.

BACKGROUND

Trial Court Proceedings

On March 12, 2012, eight separate complaints, each including California residents and non-residents as plaintiffs, were filed in the San Francisco Superior Court by or on behalf of 659 individuals, consisting of 84 California residents and 575 non-residents (the RPI), who allegedly were prescribed and ingested Plavix. They (or their spouses) claim that they suffered adverse consequences as a result. Each complaint contains the same 12 causes of action.[1] The two named

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[1] Strict Products Liability; Strict Liability—Manufacturing Defect; Negligence; Breach of Implied Warranty; Breach of Express Warranty; Deceit by Concealment—Civil Code sections 1709, 1710; Negligent Misrepresentation; Fraud by Concealment; Violation of Business and Professions Code section 17200; Violation of Business and Professions Code

defendants in each of these cases are McKesson Corporation (McKesson), which is alleged to be a pharmaceutical distribution and marketing company organized under Delaware law and headquartered in San Francisco, and BMS, which is alleged to be a pharmaceutical manufacturing and marketing company that makes and markets Plavix throughout the United States, organized under Delaware law and headquartered in New York.

Each of the complaints alleges in identical terms that defendants introduced Plavix in 1997 and heavily marketed it directly to consumers by falsely representing it "as providing greater cardiovascular benefits, while being safer and easier on a person's stomach than aspirin." According to the complaints, defendants knew that those claims were untrue and that ingesting Plavix involved "the risk of suffering a heart attack, stroke, internal bleeding, blood disorder or death [which] far outweighs any potential benefit."

On April 11, 2012, prior to being served with seven of these eight cases, BMS removed them to federal court. They were all remanded on August 10, 2012.

On September 27, 2012, BMS filed motions to quash service of the summons regarding the complaints, but not with respect to the California resident plaintiffs.[2] The plaintiffs began discovery

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section 17500; Violation of Civil Code section 1750; Loss of Consortium.

[2] BMS's petition acknowledges that the facts developed in the trial court with respect to BMS's California contacts "may be sufficient to vest *specific* personal jurisdiction over BMS" as to the 84 resident plaintiffs' claims. In subsequent briefing and

regarding these motions.[3] Meanwhile, pursuant to Code of Civil Procedure section 404.3 and rule 3.540 of the California Rules of Court,[4] Chief Justice Cantil-Sakauye, as Chair of the Judicial Council, authorized the presiding judge of the superior court to assign the eight San Francisco cases, with another, to a coordination trial judge, which the presiding judge did on April 25, 2013.

BMS was permitted to refile a consolidated motion to quash with respect to the RPI, which it did on July 9, 2013. In this motion, BMS noted in passing that "[the RPI] cannot invoke specific jurisdiction here because it is limited to cases where the 'controversy is related to or arises out of [the] defendant's contacts with the forum,' " citing *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 1089. Its principal argument, however, was that, under the recent decision of the United States Supreme Court in *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) ___ U.S. ___ [131 S.Ct. 2846] (*Goodyear*), the trial court could not assert general jurisdiction over BMS unless BMS were "at home" in California. According to BMS, its California contacts did not rise

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oral argument, BMS has conceded that California has jurisdiction over it with respect to their claims.

[3] The petition tells us that "[a]nother 40 actions involving 2,363 plaintiffs have been filed in San Francisco Superior Court." At oral argument, counsel for BMS advised us that if the multi-district litigation (MDL) cases are remanded to the San Francisco Superior Court, there will be 251 California resident plaintiffs and 3,519 non-California resident plaintiffs. Counsel for the RPI did not take issue with those numbers. Those MDL cases and plaintiffs are not presently before us.

[4] Unless otherwise noted, further statutory references are to the Code of Civil Procedure.

to that level since it was neither headquartered nor incorporated here. BMS also argued, relying on factors that apply in a specific jurisdiction inquiry, that it would violate principles of fair play and substantial justice to require that it defend against the RPI's claims here.

The RPI responded that BMS's extensive contacts with California supported the assertion of general jurisdiction under leading cases such as *Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893, 898-899. They pointed out the factual differences between the present case and Goodyear and argued that Goodyear did not disturb precedent that warranted an exercise of personal jurisdiction here. They also argued that specific jurisdiction is appropriate when a defendant has purposefully directed its activities at residents of the forum and the litigation results from alleged injuries that "arise out of or relate to" those activities, citing *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 472 (*Burger King*) and *Helicopteros Nacionales de Columbia, S.A. v. Hall* (1984) 466 U.S. 408, 414 (*Helicopteros*), and that the multi-factor "reasonableness" test set out in *Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102 (*Asahi*)[5] weighed in favor of finding specific jurisdiction over BMS as to the claims of the RPI here.

BMS reargued the importance of Goodyear in its reply. It also cited *Spirits, Inc. v. Superior Court* (1980) 104 Cal.App.3d 918, 926 for the proposition that specific jurisdiction cannot be asserted "where

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[5] We discuss this test in more detail in section II.D., *post*.

neither the injury nor the conduct that led to it have a substantial relationship to California."

On September 23, 2013, the trial court heard argument on BMS's motion to quash, the matter was submitted, and the court denied the motion. In a subsequent written order, the court, relying heavily on *International Shoe*, *supra*, 326 U.S. 310, and *Hesse v. Best Western International, Inc.* (1995) 32 Cal.App.4th 404, concluded that a defendant's wide-ranging, systematic, and continuous contacts with a forum state justify the exercise of general jurisdiction over it. The court held that California had general jurisdiction over BMS because it had sold in the state nearly $1 billion worth of Plavix between 2006 and 2012 and 196 million Plavix pills between 1998 and 2006, had been registered with the California Secretary of State to conduct business since 1936, maintained an agent for service of process in Los Angeles, operated five offices in California that employed approximately 164 people, employed approximately 250 in-state sales representatives, owned a facility in Milpitas employing 85 people that was used primarily for research, operated other facilities that were used primarily for research and laboratory activities in Aliso Viejo, San Diego and Sunnyvale, and had a small office in Sacramento that was used by the company's Government Affairs group.

The court did not directly address the question of whether, as the RPI argued in the alternative, BMS is amenable to suit in California under the doctrine of specific jurisdiction. However, as we will see, the court's references to BMS's extensive activities in California, its enjoyment of the benefits and

protections of its laws, and the exercise of jurisdiction comporting with ' " traditional notions of fair play and substantial justice " ' (*International Shoe, supra*, 326 U.S. at p. 316) are entirely consistent with a finding that specific jurisdiction is appropriate.

The Present Writ Proceedings

BMS filed the pending writ petition on October 22, 2013. After review of the RPI's verified preliminary opposition and BMS's reply, we summarily denied the petition on January 14, 2014—the same day that the United States Supreme Court announced its decision in *Daimler*. BMS promptly sought review in the California Supreme Court, relying principally upon *Daimler* and *Goodyear*.

On February 26, 2014, the court granted that petition and transferred the matter back to us with directions to vacate our prior order and issue an order to show cause why the relief sought should not be granted. We did so on March 13, 2014. The RPI filed their verified opposition, but not a formal return, on March 28, 2014. BMS filed its traverse on April 14, 2014, in which it points out that no formal return including a verified answer was filed. It argues that the opposition was not effective to deny the factual allegations of the petition, citing, among others, Eisenberg et al., California Practice Guide: Civil Appeals and Writs (The Rutter Group 2014) paragraph 15:223 at page 15-96.14. However, BMS's legal conclusions have not been admitted. And, to the extent that the facts were effectively denied in the RPI's verified preliminary opposition and

opposition, we exercise our discretion to treat those facts as denied.[6]

We granted leave for the Chamber of Commerce of the United States of America to file an amicus curiae brief in support of BMS's petition. The RPI did not respond, but the Consumer Attorneys of California and the American Association for Justice subsequently filed unopposed applications for leave to file amicus briefs in support of the RPI, which we also granted. BMS filed a response to those amicus briefs on June 9, 2014. Prior to oral argument, we asked the parties to focus their presentations on certain questions related to whether or not the lower court could exercise specific jurisdiction over BMS under the unique circumstances of this case. The parties did so at oral argument, which took place on June 17, 2014, and the matter was submitted.

DISCUSSION

I. *General Jurisdiction*

BMS argues that *Daimler* makes clear the trial court erred in concluding it had general jurisdiction over BMS. We agree.

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[6] An example of a mixed question of law and fact appears at paragraph 19 of the petition, where BMS alleges that "Petitioner will suffer irreparable injury and be denied due process if it is forced to defend in California courts hundreds of claims brought by out-of-state plaintiffs who have no connection to this State and whose injuries did not occur here." RPI's informal verified response includes the statement that "BMS cannot demonstrate that it will suffer irreparable harm and be denied due process if its Petition were denied and it were 'forced' to defend the nonresident Plaintiffs' cases in California." We will treat BMS's entire allegation as being denied.

A. *The Origins of the Modern Jurisprudence Regarding Personal Jurisdiction*

We begin our analysis of personal jurisdiction with a review of the two seminal cases for our modern jurisprudence on the subject, *Pennoyer v. Neff* (1878) 95 U.S. 714 (*Pennoyer*) and *International Shoe*.[7]

In *Pennoyer*, *supra*, 95 U.S. 714, the Supreme Court articulated a strictly territorial rule for what personal jurisdiction a state court could assert over a non-resident consistent with the Fourteenth Amendment. Neff, a California resident, owned a tract of land in Oregon. Mitchell, an Oregon resident, sued Neff in an Oregon state court for money owed for legal services rendered. After service of the suit by publication and mailing to Neff was made as required by Oregon law, judgment by default was entered against Neff. Pursuant to an execution issued upon this judgment, Pennoyer acquired the tract under a sheriff's deed. Neff then sued Pennoyer in federal court to recover the tract. (*Pennoyer*, *supra*, 95 U.S. at pp. 719-720.)

The *Pennoyer* court determined the judgment against Neff was void because a state could not, consistent with constitutional due process, acquire jurisdiction by the service methods used against a non-resident who is absent from the state. The court stated, "The authority of every tribunal is necessarily restricted by the territorial limits of the State in

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[7] Pursuant to section 410.10, California's "long-arm" statute (*Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 583), " ' [a] court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.' "

which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this court, an illegitimate assumption of power, and be resisted as mere abuse." (*Pennoyer*, *supra*, 95 U.S. at p. 720.) In other words, "no State can exercise direct jurisdiction and authority over persons or property without its territory." (*Id.* at p. 722.)

Sixty-seven years later, the Supreme Court replaced this strict territorial rule with a more flexible one in *International Shoe*. International Shoe Company was a Delaware corporation headquartered in Missouri (International Shoe). It challenged the right of the State of Washington to collect from it contributions to Washington's state unemployment compensation fund based on International Shoe's commissions to 11 to 13 salesmen living and working in Washington. International Shoe had no office in Washington (although its salesmen rented temporary and permanent sample rooms and were reimbursed by the company) and did not maintain any stock of merchandise there; its deliveries of merchandise sold by its salesmen were all made in interstate commerce. (*International Shoe*, *supra*, 326 U.S. at pp. 313-314.)

The Supreme Court reviewed the principles of personal jurisdiction at some length and rejected International Shoe's argument that personal jurisdiction over it in Washington would violate due process. Its opinion predated the court's later distinctions between "general jurisdiction" and

"specific jurisdiction,"[8] and it contains analysis that is relevant to both. In what has become the foundation of personal jurisdiction, the court stated, "While it has been held in cases on which appellant relies that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, [citations], there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." (*International Shoe*, *supra*, 326 U.S. at p. 318.) The court continued, "although the commission of some single or occasional acts of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it, [citation], other such acts, because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit." (*Ibid.*)

The court concluded, "It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be

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[8] That distinction was suggested by Professors von Mehren and Trautman in 1966. (See von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis* (1966) 79 Harv. L.Rev. 1121, 1136.) The terminology, and the differentiation between "general or all purpose" jurisdiction and "specific or case linked" jurisdiction, were first discussed by the Supreme Court in *Helicopteros*, *supra*, 466 U.S. at pages 414, footnote 8 and 415, footnote 9.

simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. [Citations.] Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." (*International Shoe*, *supra*, 326 U.S. at p. 319.)

As Justice Ginsburg recently noted in *Daimler*, *supra*, 134 S.Ct. at page 754, the *International Shoe* court ultimately found that Washington had personal jurisdiction over International Shoe based on what would later become known as "specific jurisdiction": "But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, *so far as those obligations arise out of or are connected with the activities within the state*, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." (*International Shoe*, *supra*, 326 U.S. at p. 319, italics added.)

The court found that International Shoe's activities were "systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It

is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there." (*International Shoe*, *supra*, 326 U.S. at p. 320.)

Since *International Shoe* and before *Daimler*, courts determining whether general jurisdiction existed often focused on the quality and quantity of contacts a company had with a particular state, without much additional analysis or inquiry. This appears to be the approach taken by the RPI and court below. However, as we now discuss, *Goodyear* and *Daimler* together make clear that general jurisdiction should be asserted only when the evidence indicates the company is " ' "essentially at home" ' " in the state. (*Daimler*, *supra*, 134 S.Ct. at p. 751.)

B. *Goodyear*

The Supreme Court first referred to this "at home" standard in *Goodyear*. Two young soccer players from North Carolina were killed in a bus accident outside Paris, France. Their parents filed wrongful-death suits in the state courts of North Carolina against three foreign Goodyear entities, which were located in Luxembourg, Turkey, and France respectively (together petitioners). They all were indirect subsidiaries of Goodyear USA, an Ohio corporation also named as a defendant. The facts showed that the petitioners "[had] no place of business, employees, or bank accounts in North Carolina. They [did] not design, manufacture, or advertise their products in North Carolina. And they

[did] not solicit business in North Carolina or themselves sell or ship tires to North Carolina customers. Even so, a small percentage of petitioners' tires (tens of thousands out of tens of millions manufactured between 2004 and 2007) were distributed within North Carolina by other Goodyear USA affiliates. These tires were typically customer ordered to equip specialized vehicles ... and ... the type of tire involved in the accident, a Goodyear Regional RHS tire manufactured by Goodyear Turkey, was never distributed in North Carolina." (*Goodyear*, *supra*, 131 S.Ct. at p. 2852.)

The petitioners (but not Goodyear USA) moved to dismiss the claims against them for lack of personal jurisdiction. The trial court denied their motion and the North Carolina Court of Appeals affirmed. The Supreme Court reversed in a unanimous decision written by Justice Ginsburg. It rejected the view of the North Carolina courts that North Carolina had general jurisdiction over the petitioners consistent with the Due Process Clause of the Fourteenth Amendment because some of their tires, although manufactured abroad, had reached North Carolina through the "'the stream of commerce.'" "A connection so limited between the forum and the foreign corporation ... is an inadequate basis for the exercise of general jurisdiction. Such a connection does not establish the 'continuous and systematic' affiliation necessary to empower North Carolina courts to entertain claims unrelated to the foreign corporation's contacts with the State." (*Goodyear*, *supra*, 131 S.Ct. at p. 2851.)

The *Goodyear* court could have ended its analysis there, but it did not. Quoting *International Shoe*, it

described "general" jurisdiction as " 'instances in which continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.' " (*Goodyear*, *supra*, 131 S.Ct. at p. 2853, quoting *International Shoe*, *supra*, 326 U.S. at p. 318.) It continued, "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." (*Goodyear* at pp. 2853-2854.) The court favorably cited a 23–year old Texas Law Review article by Professor Lea Brilmayer as "identifying domicile, place of incorporation, and principal place of business as 'paradig[m]' bases for the exercise of general jurisdiction." (*Goodyear* at p. 2854, citing Brilmayer, *A General Look At General Jurisdiction* (1988) 66 Texas L.Rev. 721, 728.)

BMS relies here, as it did in the trial court, upon the *Goodyear* court's use of the phrase "at home" as setting the minimum standard under which general jurisdiction can be asserted against an out of state corporate defendant. But that phrase was not explained in the court's *Goodyear* decision beyond the reference to Professor Brilmayer's law review article. To the contrary, the *Goodyear* court, after discussing the only two general jurisdiction cases decided by the court after *International Shoe*, *Perkins v. Benquet Consolidated Mining Co.* (1952) 342 U.S. 437 (*Perkins*) and *Helicopteros*, *supra*, 466 U.S. 408, concluded, "petitioners are in no sense at

home in North Carolina. [9] Their attenuated connections to the State ... fall far short of ... 'the continuous and systematic general business contacts' necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State." (*Goodyear*, *supra.* 131 S.Ct at p. 2857, quoting *Helicopteros*, *supra*, 466 U.S. at p. 416.)

Thus, while the court's decision in *Daimler* has proven BMS to be correct about the significance of these passing references to "at home" in *Goodyear*, a further contouring of the law of general jurisdiction was by no means obvious from the *Goodyear* decision. This was especially true in light of the *Goodyear* court's observation that "[t]he canonical opinion in this area remains" *International Shoe* (*Goodyear*, *supra*, 131 S.Ct. at p. 2853) and its own quoting of the traditional standard for general jurisdiction:

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[9] Justice Ginsburg also used the phrase "at home" in her dissenting opinion in *J. McIntyre Machinery, Ltd. v. Nicastro* (2011) ___ U.S. ___ [131 S.Ct. 2780] (*J.McIntyre*), which was announced on the same day as *Goodyear*. *J. McIntyre* involved injury to a New Jersey resident in New Jersey from use of a machine made by a British company with no direct connections to that state, but which marketed machines extensively in the United States through a distributor. Justice Ginsburg parted ways from the four justices in the plurality opinion to express her view that marketing with the expectation of sales throughout the United States could be sufficient to support specific jurisdiction over an injury claim arising in New Jersey. She agreed, however, citing *Goodyear*, that the company was not subject to general jurisdiction in New Jersey courts because it was "hardly 'at home' in New Jersey," but once more provided no further explanation for what it meant to be "at home" for jurisdictional purposes. (*Id.* at p. 2797 [dis. opn. of Ginsburg, J.].)

" 'the continuous and systematic general business contacts necessary to empower [the forum state] to entertain suit against them on claims unrelated to anything that connects them to the State.' " (*Id.* at p. 2857, quoting *Helicopteros*, *supra*, 466 U.S. at p. 416.)[10]

C. *Daimler*

The Supreme Court further explained its "at home" standard in *Daimler*. Argentinean residents with no connection to California sued Daimler AG, alleging that its wholly-owned Argentinean subsidiary collaborated with state security forces to kidnap, detain, torture, and kill plaintiffs or their relatives in Argentina during Argentina's " 'Dirty War' " between 1976 and 1983. They filed suit in the Northern District of California based upon a theory of general jurisdiction. Daimler AG had no contact with California, but another of its wholly owned subsidiaries, Mercedes–Benz USA, LLC (MBUSA), did extensive business in California, although it was incorporated in Delaware and had its principal place of business in New Jersey. The district court granted Daimler's motion to dismiss for lack of personal jurisdiction, but the Ninth Circuit reversed. (*Daimler*, *supra*, 134 S.Ct. at pp. 751-753.)

The Supreme Court granted certiorari and reversed. It noted that the plaintiffs' theory of general jurisdiction included that, "if a Daimler-

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[10] Because of our conclusion that *Daimler* forecloses the RPI's general jurisdiction argument, we need not discuss the very different facts before the Supreme Court in *Perkins*, in which general jurisdiction was upheld, and *Helicopteros*, in which it was not. Neither case applied the doctrine of specific jurisdiction, which we take up, *post*.

manufactured vehicle overturned in Poland, injuring a Polish driver and passenger, the injured parties could maintain a design defect suit in California." (*Daimler*, *supra*, 134 S.Ct. at p. 751.) It held that "[e]xercises of personal jurisdiction so exorbitant ... are barred by due process constraints on the assertion of adjudicatory authority." (*Ibid.*) It repeated its holding in *Goodyear* that a court may assert general jurisdiction "over a foreign corporation 'to hear any and all claims against [it]' only when the corporation's affiliations with the State in which suit is brought are so constant and pervasive '*as to render [it] essentially at home in the forum State.*'" (*Daimler* at p. 751, italics added.) "Instructed by *Goodyear*," the court concluded that "Daimler [was] not 'at home' in California, and cannot be sued there for injuries plaintiffs attribute to MB Argentina's conduct in Argentina." (*Ibid.*)

Importantly for our case, the *Daimler* court also held that Daimler's connections to California through MBUSA were insufficient to support general jurisdiction. MBUSA, an indirect subsidiary of Daimler, served as Daimler's exclusive importer and distributor in the United States, "purchasing Mercedes–Benz automobiles from Daimler in Germany, then importing those vehicles, and ultimately distributing them to independent dealerships located throughout the Nation. Although MBUSA's principal place of business is in New Jersey, MBUSA ha[d] multiple California-based facilities, including a regional office in Costa Mesa, a Vehicle Preparation Center in Carson, and a Classic Center in Irvine . . . . MBUSA [was] the largest supplier of luxury vehicles to the California market.

In particular, over 10% of all sales of new vehicles in the United States [took] place in California, and MBUSA's California sales account[ed] for 2.4% of Daimler's worldwide sales." (*Daimler*, *supra*, 134 S.Ct. at p. 752.) Nonetheless, the court concluded, "[e]ven if we were to assume that MBUSA is at home in California, and further to assume MBUSA's contacts are imputable to Daimler, there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler's slim contacts with the State hardly render it at home there." (*Id.* at p. 760.)

The *Daimler* court further explained, "*Goodyear* made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there. 'For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.' [Citations.] With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] . . . bases for general jurisdiction.' [Citation.] Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable. [Citation.] These bases afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims." (*Daimler*, *supra*, 134 S.Ct. at p. 760.) The court "[did] not foreclose the possibility that ... a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State[,]"

but stated this was "an exceptional case." (*Id.* at p. 761, fn. 19.)

"*Goodyear* did not hold that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business; it simply typed those places paradigm all-purpose forums. Plaintiffs would have us look beyond the exemplar bases *Goodyear* identified, and approve the exercise of general jurisdiction in every State in which a corporation 'engages in a substantial, continuous, and systematic course of business.' [Citation.] That formulation, we hold, is unacceptably grasping.

"... [T]he words 'continuous and systematic' were used in *International Shoe* to describe instances in which the exercise of *specific* jurisdiction would be appropriate. [Citation.] Turning to all-purpose jurisdiction, in contrast, *International Shoe* speaks of 'instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit ... *on causes of action arising from dealings entirely distinct from those activities.*' [Citations.] Accordingly, the inquiry under Goodyear is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's 'affiliations with the State are so "continuous and systematic" as to render [it] essentially at home in the forum State.' " (*Daimler, supra*, 134 S.Ct. at p. at pp.760-761.) The court further distinguished between general and specific jurisdiction by noting that they "have followed markedly different trajectories post-*International Shoe*. Specific jurisdiction has been cut loose from

Pennoyer's sway, but we have declined to stretch general jurisdiction beyond limits traditionally recognized. As this Court has increasingly trained on the 'relationship among the defendant, the forum, and the litigation,' [citation], *i.e.*, specific jurisdiction, general jurisdiction has come to occupy a less dominant place in the contemporary scheme." (*Daimler, supra,* 134 S.Ct. at pp. 757-758.)

The court further clarified that "general jurisdiction inquiry does not 'focu[s] solely on the magnitude of the defendant's in-state contacts.' [Citation.] General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, 'at home' would be synonymous with 'doing business' tests framed before specific jurisdiction evolved in the United States." (*Daimler, supra,* 134 S.Ct. at p. 762, fn. 20.)

D. *Application of Goodyear and Daimler to This Case*

We recognize that the trial court's determination that it has general jurisdiction was based on a record created and an analysis engaged in prior to Daimler. As a result, the RPI, who have the burden of proving jurisdiction here (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062 (*Snowney*); *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449 (*Vons*)), may not have pursued certain discovery and did not present certain facts and arguments that are relevant post-*Daimler* to determining whether general jurisdiction exists.

Specifically, the RPI focused on BMS's significant contacts with California. They did not establish that BMS is incorporated, has its principal place of business, or has its headquarters here. Further, the RPI did not present much, if any, evidence regarding BMS's activities in their entirety and, therefore, did not establish that BMS's contacts with California were somehow so exceptional as to render BMS "essentially at home" here. Based on the record before us, we cannot effectively distinguish BMS's extensive sales and research activities in California from the extensive sales activities of MBUSA in California as discussed in *Daimler*, which the Supreme Court ruled were insufficient to establish the State had general jurisdiction over Daimler. Therefore, the trial court's ruling that it had general jurisdiction over BMS cannot be allowed to stand.

II. *Specific Jurisdiction*

As Division Four of this court has noted, "we do not review the reasons why the trial court ruled as it did, but consider the validity of its ruling. If a trial court's ruling is correct, we will affirm, even if its reasoning was flawed." (*In re Automobile Antitrust Cases I and II* (2005) 135 Cal.App.4th 100, 117.) Although the parties debated specific jurisdiction below, the trial court, without the benefit of Daimler, did not find it necessary to address that issue. The parties again debate the issue in this appeal. We decide the issue now because there is no dispute as to the jurisdictional facts.[11] In such a circumstance,

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[11] At oral argument, the RPI's counsel suggested that if we were inclined to rule against the RPI on the issue of specific jurisdiction, we should remand so that a more complete record of McKesson's role with respect to the RPI could be developed.

" ' "the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record." ' " (*Snowney*, *supra*, 35 Cal.4th at p. 1062, quoting Vons, supra, 14 Cal.4th at p. 449.) Upon conducting such an independent review, we conclude the trial court has specific jurisdiction over BMS.

The Supreme Court's discussion in *Daimler* indicates that specific jurisdiction continues to "flourish" as it has for many years.[12] Whether or not a court has specific jurisdiction over a defendant involves an analysis of whether, first, the defendant has " 'purposefully directed' " its activities at the forum state (*Keeton v. Hustler Magazine, Inc.* (1984) 465 U.S. 770, 774 (*Keeton*); second, the plaintiff's claims are related to or arise out of these forum-directed activities (*Helicopteros*, *supra*, 466 U.S. at p. 414); and, third, the exercise of jurisdiction is

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BMS's counsel opposed that suggestion, stating that the RPI had a full and fair opportunity to take discovery in opposition to the motion to quash. We note that the record provided to us does not show that the RPI sought to continue the hearing on the consolidated motion to quash because of any claim of inadequate opportunity for discovery. Be that as it may, for the reasons discussed, *post*, we find the undisputed facts before us sufficient to support specific jurisdiction over BMS.

[12] Justice Ginsburg, responding on behalf of the *Daimler* majority to Justice Sotomayor's concern, stated in a concurring opinion, that narrowing the doctrine of general jurisdiction would result in injustices, wrote: "Remarkably, Justice Sotomayor treats specific jurisdiction as though it were barely there. Given the many decades in which specific jurisdiction has flourished, it would be hard to conjure up an example of the 'deep injustice' Justice Sotomayor predicts as a consequence of our holding that California is not an all-purpose forum for suits against Daimler." (*Daimler*, *supra*, 134 S.Ct. at p. 758, fn. 10.)

reasonable. (*Asahi*, *supra*, 480 U.S. at p. 113.) That said, as our own Supreme Court has noted, "the United States Supreme Court has rejected the use of 'talismanic jurisdictional formulas' (*Burger King*, *supra*, 471 U.S. at p. 485), stating that ' "the facts of each case must [always] be weighed" in determining whether personal jurisdiction would comport with "fair play and substantial justice." ' "(*Vons*, *supra*, 14 Cal.4th at p. 460.) We now discuss each of these matters.

A. *The Traditional Conception of "Fair Play and Substantial Justice"*

In *Daimler*, the Supreme Court noted: "*International Shoe*'s conception of 'fair play and substantial justice' presaged the development of two categories of personal jurisdiction. The first category is represented by *International Shoe* itself, a case in which the in-state activities of the corporate defendant 'ha[d] not only been continuous and systematic, but also g[a]ve rise to the liabilities sued on.'.... Adjudicatory authority of this order, in which the suit 'aris[es] out of or relate[s] to the defendant's contacts with the forum,' [citation] is today called 'specific jurisdiction.' " (*Daimler*, *supra*, 134 S.Ct. at p. 754, citing *Goodyear*, *supra*, 131 S.Ct. 2853.)

As suggested by Justice Sotomayor's concurrence in *Daimler* and the majority's response, this concept, referred to by Justice Sotomayor as "reciprocal fairness," is a " 'touchstone principle of due process' "regarding specific jurisdiction. (*Daimler*, *supra*, 134 S.Ct. at p. 758, fn. 10; *Id.* at p. 768 [conc. opn. of Sotomayor, J.].) It dates back to *International Shoe*, in which the Supreme Court held, "to the extent that a corporation exercises the privilege of conducting

activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." (*International Shoe*, *supra*, 326 U.S. at p. 319.) In other words, in analyzing the exercise of specific jurisdiction, "[o]nce it has been decided that a defendant purposely established minimum contacts with the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" (*Burger King*, *supra*, 471 U.S. at p. 476.)

B. *"Minimum Contacts" and "Relatedness"*

Several more recent Supreme Court cases have reaffirmed this fundamental tenet of personal jurisdiction in discussing the minimum contacts between a defendant and a forum state, and the relatedness of these contacts to a plaintiff's claims, that are necessary to establish specific jurisdiction. For example, in *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286 (*World-Wide Volkswagen*), defendant, a New York automobile wholesaler and retailer with no contact with Oklahoma, was sued in Oklahoma by New York residents who were passing through that state when they had a car accident. The Supreme Court held that the accident's location was not a sufficient basis for an Oklahoma court's assertion of personal jurisdiction over the defendant. In so holding, the

court reiterated the rule of *International Shoe*: "As has long been settled, and as we reaffirm today, a state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist 'minimum contacts' between the defendant and the forum State. [*International Shoe*, *supra*, at p. 316]. The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system. [¶] The protection against inconvenient litigation is typically described in terms of 'reasonableness' or 'fairness.' We have said that the defendant's contacts with the forum State must be such that maintenance of the suit 'does not offend "traditional notions of fair play and substantial justice." '[*International Shoe*, *supra*, at p. 316.]" (*World–Wide Volkswagen*, *supra*, 444 U.S. at pp. 291-292.)

That said, the *World-Wide Volkswagen* court also noted that "[t]he limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years" because of "a fundamental transformation in the American economy." (*World-Wide Volkswagen*, *supra*, 444 U.S. at pp. 292-293.) It quoted its view some years before in *McGee v. International Life Ins. Co.* (1957) 355 U.S. 220 (*McGee*) that there was an increasing nationalization of commerce and amount of business conducted by mail across state lines, and that " 'at

the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.' " (*World-Wide Volkswagen*, at p. 293, quoting *McGee*, at pp. 222-223.) These historical developments, the court further noted, "have only accelerated in the generation since" *McGee* was decided. (*World-Wide Volkswagen*, at p. 293.)

In a case decided a few years after *World-Wide Volkswagen*, *Keeton*, *supra*, 465 U.S. 770, the Supreme Court, again guided by the traditional conception of fair play and substantial justice, found specific jurisdiction existed, even though neither the plaintiff nor the defendant resided in the forum State and most of the plaintiff's injuries occurred elsewhere. In *Keeton*, the United States Court of Appeals for the First Circuit had upheld a district court's dismissal of plaintiff's libel suit against Hustler Magazine for lack of personal jurisdiction because New Hampshire's "interest in redressing the tort of libel to petitioner [was] too attenuated for an assertion of personal jurisdiction over respondent." (*Keeton*, *supra*, 465 U.S. at p. 773.) The First Circuit also had held that it would have been unfair to apply New Hampshire's uniquely long six-year statute of limitations for libel damages accruing throughout the United States under the " 'single publication rule.' " (*Ibid.*)

The Supreme Court reversed. It held that Hustler Magazine, having "continuously and deliberately exploited the New Hampshire market, ... must reasonably anticipate being haled into court there in a libel action based on the contents of its magazine,"

even if New Hampshire applied the single publication rule to allow recovery of damages from publications throughout the United States that otherwise would have been time-barred. (*Keeton, supra*, 465 U.S. at pp. 781, 774-775.) The court repeated its previous instruction that, "[i]n judging minimum contacts, a court properly focuses on 'the relationship among the defendant, the forum, and the litigation.' [Citations.] Thus, it is certainly relevant to the jurisdictional inquiry that petitioner is *seeking* to recover damages suffered in all States in this one suit. The contacts between respondent and the forum must be judged in the light of that claim, rather than a claim only for damages sustained in New Hampshire. That is, the contacts between respondent and New Hampshire must be such that it is 'fair' to compel respondent to defend a multistate lawsuit in New Hampshire seeking nationwide damages for all copies of the five issues in question, even though only a small portion of those copies were distributed in New Hampshire." (*Id.*, at p. 775.)

Keeton further instructs that the doctrine of specific jurisdiction can apply to the claims of a non-resident against a non-resident. Initially, we acknowledge, as does *Keeton*, that the clearest case for specific jurisdiction exists when the nonresident defendant's conduct has caused injury to plaintiff in his or her state of residence, and plaintiff sues there. That has been understood since *International Shoe, supra*, 326 U.S. at page 317 (" '[p]resence' in the state ... has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or

authorization to an agent to accept service of process has been given"). However, even though most cases in which specific jurisdiction has been upheld involved a resident plaintiff, the Supreme Court has *not* held that due process *requires* that to be so.

To the contrary, in addition to reiterating the longstanding rule that "in judging minimum contacts, a court properly focuses on 'the relationship among the defendant, the forum, and the litigation' " (*Keeton*, *supra*, 465 U.S. at p. 775), *Keeton* makes clear that "[p]laintiff's residence may be the focus of the activities of the defendant out of which the suit arises. [Citations.] But plaintiff's residence in the forum State is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of defendant's contacts." (*Id.* at p. 780; accord, *Walden v. Fiore* (2014) ___ U.S. ___ [134 S.Ct. 1115, 1122-1123] (*Walden*)). As the Supreme Court stated in its latest reiteration of the minimum contacts necessary to establish specific jurisdiction, "[d]ue process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State." (*Walden* at pp. 1122-1123, quoting *Burger King*, *supra*, 471 U.S. at p. 475.)

Although the doctrine of specific jurisdiction continues to flourish, its application has proved to be problematic for the Supreme Court. For example, on the same day that it decided *Goodyear*, the court issued *J. McIntyre*, *supra*, 131 S.Ct. 2780. As we have discussed, the court held that New Jersey did not have specific jurisdiction over the British

manufacturer of a machine that caused an injury to plaintiff in New Jersey. The manufacturer marketed machines in the United States, but not New Jersey, through a domestic distributor. Justice Kennedy wrote for the plurality, consisting also of Chief Justice Roberts and Justices Scalia and Thomas, with whom Justices Breyer and Alito concurred and Justices Ginsburg, Sotomayor, and Kagan dissented. Justice Kennedy, acknowledging that the doctrine of specific jurisdiction remains fully viable, wrote that "submission through contact with and activity directed at a sovereign may justify specific jurisdiction 'in a suit arising out of or related to the defendant's contacts with the forum.'" (*Id.* at pp. 2787-2788.) However, he also acknowledged that "[t]he rules and standards for determining when a State does or does not have jurisdiction over an absent party have been unclear because of decades-old questions left open in [*Asahi*, *supra*, 480 U.S. 102]." (*Id.* at p. 2785.)[13]

Furthermore, the Supreme Court has not yet further defined the second step of specific jurisdiction analysis, that being what it means for a suit to "arise

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[13] Justices Breyer and Alito concurred in the judgment only because the case did not involve recent changes in commerce and communication and they saw no need to decide the question as the plurality had. The dissenting justices indicated that, given the defendant's extensive contacts with other parts of the United States, they would have upheld the application of specific jurisdiction by the New Jersey Supreme Court on the basis that it was "fair and reasonable, given the mode of trading of which this case is an example, to require the international seller to defend at the place its products cause injury." (J. *McIntyre*, *supra*, 131 S.Ct. at p. 2800 [dis. opn. of Ginsburg, J.].)

out of" or "relate" to a defendant's contacts with the State. (See *Helicopteros*, *supra*, 466 U.S. at p. 416, fn. 10.) However, California's Supreme Court has provided further guidance on the "relatedness" part of the specific jurisdiction analysis. We turn now to the key cases in which it has done so.

In *Vons*, *supra*, 14 Cal.4th 434, our Supreme Court upheld California's specific jurisdiction over two Jack-in-the-Box franchisees located in the State of Washington. Extensive litigation was pending in the San Diego County Superior Court arising from E. coli exposures to Jack-in-the-Box customers around the country. Vons supplied hamburger from a California plant to Foodmaker, Inc., a Delaware corporation with its principal place of business in San Diego, of which Jack-in-the-Box was a division. Foodmaker supplied many items, including hamburger, to its Jack-in-the Box franchisees throughout the United States. Eighty-five franchisees from California and other states, whose customers had not been injured, sued Vons and Foodmaker in San Diego for loss of business caused by news of the E. coli outbreak. (*Vons*, *supra*, 14 Cal.4th at pp. 440-441.)

When Foodmaker cross-claimed against Vons in San Diego, Vons filed a cross complaint against, among others, two Washington corporations who were Jack-in-the-Box franchisees, Seabest Foods, Inc. and Washington Restaurant Management, Inc. The two owned restaurants at which customers were allegedly served contaminated burgers that caused injuries to customers. Vons alleged that the outbreak would not have occurred but for their negligence in handling the meat. It alleged causes of action for negligence, negligent and intentional

interference with economic advantage, and indemnity against them. (*Vons*, *supra*, 14 Cal.4th at pp. 441-442.)

The appeal focused on the motions by the two Washington franchisees to quash service of the summons regarding Vons's cross complaint for lack of personal jurisdiction, which were granted and affirmed on appeal. Our Supreme Court reversed, in significant part because both franchisees had consented to jurisdiction over them in disputes with Foodmaker (but not Vons) in California. In addition, both had other contacts in California. In doing so, the court extensively reviewed pertinent California and federal cases and summarized the test for specific jurisdiction as follows: " 'The crucial inquiry concerns the character of defendant's activity in the forum, whether the cause of action *arises out of or has a substantial connection with that activity*, and the balancing of the convenience of the parties and the interests of the state in assuming jurisdiction.' " (*Vons*, *supra*, 14 Cal.4th at pp. 452-453, quoting *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 148 (*Cornelison*).)

The court adopted this "substantial connection" test after a careful analysis, including of *International Shoe*. (E.g., *Vons*, *supra*, 14 Cal.4th at p. 474 [quoting *International Shoe*'s statement that an undue burden would not be imposed if a defendant were required to respond to suits regarding obligations that "arise out of *or are connected with* the activities within the state" (*International Shoe*, *supra*, 326 U.S. at p. 319, italics added]). It noted that the United States Supreme Court had not

articulated a precise test for evaluating the "relatedness" requirement.

After analyzing the language in which the high court described the doctrine, the *Vons* court considered and rejected several tests proffered by the parties. (*Vons*, *supra*, 14 Cal.4th at pp. 453-455.) It held that the so-called proximate cause test, is too narrow, the " 'but for' " test is too broad and amorphous, and the "substantive relevance test" has an "overly restrictive view of the interest of the state in providing a judicial forum and redress to its residents." (*Id.* at p. 475.)[14] Instead, the *Vons* court adopted the "substantial connection" test, under which the relatedness requirement is satisfied if "there is a substantial nexus or connection between the defendant's forum activities and the plaintiff's claim." (*Id.* at p. 456.)[15]

Three aspects of *Vons* are of particular note to the present case. First, the *Vons* court concluded that a defendant's contacts with the state and their connection to the claim at-issue were "inversely related." It stated, "as the high court suggested in *International Shoe*, *supra*, 326 U.S. 310, for the purpose of establishing jurisdiction the intensity of forum contacts and the connection of the claim to those contacts are inversely related. (See

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[14] We will return to the state's interest in providing a forum in our discussion of the "reasonableness" factors, *post*.

[15] Among the precedents the *Vons* court relied upon for the "substantial connection" test of relatedness was its earlier decision in *Cornelison*, *supra* 16 Cal.3d at page 148, *McGee*, *supra*, 355 U.S. at page 223, and *Hanson v. Denckla* (1958) 357 U.S. 235, 250-253, all of which discuss the significance of such a connection. (*Vons*, *supra*, 14 Cal.4th at pp. 448, 452.)

International Shoe, *supra*, 326 U.S. at p. 317 [' "Presence" in the state ... has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on.... Conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities ... are not enough to subject it to suit on causes of action unconnected with the activities there.'].)" (*Vons*, *supra*, 14 Cal.4th at p. 452.) Quoting *Cornelison*, the *Vons* court stated, " '[A]s the relationship of the defendant with the state seeking to exercise jurisdiction over him grows more tenuous, the scope of jurisdiction also retracts, and fairness is assured by limiting the circumstances under which the plaintiff can compel him to appear and defend.' " (*Vons*, *supra*, 14 Cal.4th at p. 448, quoting *Cornelison*, *supra*, 16 Cal.3d at pp. 147-148, fn. omitted.)

Second, the *Vons* court criticized the appellate court for treating the lack of relationships between Vons and the franchisees as "critical in determining whether the claim was sufficiently related to the forum contacts to permit the exercise of specific jurisdiction in California. Contrary to the Court of Appeal's thesis, ... the defendant's forum activities need not be directed at the plaintiff in order to give rise to specific jurisdiction." (*Vons*, *supra*, 14 Cal.4th at p. 457, citing *Keeton*, *supra*, 465 U.S. 770, 775; *Cornelison supra*, 16 Cal.3d 143 ["jurisdiction found although the defendant's business activities in California were not directed at the accident victim"]; *Akro Corp. v. Luker* (Fed.Cir.1995) 45 F.3d 1541. 1547 [" 'plaintiff need not be the forum resident

toward whom any, much less all, of the defendant's relevant activities were purposefully directed' "]; *In re Oil Spill by Amoco Cadiz off the Coast of France on March 16, 1978* (1983) 699 F.2d 909, 917 ["French victims of oil spill may bring a tort action against a Spanish shipbuilder in an Illinois court; their claim 'could readily be said to arise from the negotiating and signing, in Illinois, of the [shipbuilding] contract' even though the negotiations obviously were not directed at the plaintiffs."].) "The United States Supreme Court has stated more than once that *the nexus required to establish specific jurisdiction is between the defendant, the forum, and the litigation* (*Helicopteros*, *supra*, 466 U.S. at p. 411; [citation])....For the purpose of deciding whether a defendant has minimum contacts or purposefully has availed itself of forum benefits, the relevant contacts are said to be with the forum, because it is the defendant's choice to take advantage of opportunities that exist in the forum that subjects it to jurisdiction. ([*Asahi*, *supra*, 480 U.S. at p. 112; *Burger King*, *supra*, 471 U.S. at pp. 475, 479; *Helicopteros*, *supra*, 466 U.S. at p. 414; *Shaffer v. Heitner* (1977) 433 U.S. 186, 204.])" (*Vons*, *supra*, 14 Cal.4th at p. 458, italics added.)

Third, the *Vons* court emphasized that the ultimate goal of the due process clause is fairness. Therefore, a court determining specific jurisdiction should focus on the relationship between a nonresident's contacts with the State and the claim involved to ensure a nonresident defendant is not unfairly brought into court on the basis of random contacts. This does not require that the claim arise directly out of a defendant's contacts with California. To the contrary, the court determined, "When, as here, the

defendants sought out and maintained a continuing commercial connection with a California business [Foodmaker], *it is not necessary that the claim arise directly from the defendant's contacts in the state.*" (*Vons*, *supra*, 14 Cal.4th at p. 453, italics added.) "Rather, as long as the claim bears a substantial connection to the nonresident's forum contacts, the exercise of specific jurisdiction is appropriate. The due process clause is concerned with protecting nonresident defendants from being brought unfairly into court in the forum, on the basis of random contacts. That constitutional provision, however, does not provide defendants with a shield against jurisdiction when the defendant purposefully has availed himself or herself of benefits in the forum. The goal of fairness is well served by the standard ... that ... there must be a *substantial connection* between the forum contacts and the plaintiff's claim to warrant the exercise of specific jurisdiction." (*Id.* at p. 452.)

Although *Vons* arose in the context of a franchise relationship not unlike that in *Burger King*, our Supreme Court has not restricted its view of the relatedness requirement to that type of business or to non-resident franchisees that have agreed to litigate disputes with their franchisor in California. To the contrary, we have found in our own independent research that in *Snowney*, *supra*, 35 Cal.4th 1054, the court confirmed and extended its view of what is needed to satisfy the relatedness requirement. There, a group of Nevada hotels were sued by a class of hotel patrons who alleged that they had not been provided with notice of an energy surcharge imposed on all hotel guests. Although the

hotel defendants conducted no business and had no bank accounts or employees in California, they advertised heavily in California and obtained a significant percentage of their business from California residents. They also maintained an Internet web site and a toll-free phone number for customers to obtain room quotes and make reservations.

The trial court granted the hotels' motion to quash, but the Second District Court of Appeal reversed. Our Supreme Court took the case and published a superseding opinion agreeing with the appellate court that specific jurisdiction was appropriate over defendants.

As in *Vons*, the *Snowney* court reviewed the requirement of the Fourteenth Amendment that plaintiffs establish defendant's minimum contacts with California. It reiterated, as the Supreme Court had stated in *International Shoe* and other cases, that "[t]he test 'is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present.' " (*Snowney*, *supra*, 35 Cal.4th at p. 1061.) After determining that defendants' extensive advertising and internet solicitations within California met the minimum contacts requirement, the court turned to the relatedness requirement, and found that the controversy was related to or arose out of defendants' contacts with California. (*Id.*, at p. 1067.) In again applying its "substantial connection" test, the court reiterated its analysis in *Vons* that" 'for the purpose of establishing jurisdiction the intensity of forum contacts and the connection of the claim to those

contacts are inversely related.' [Citation.] '[T]he more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim.' [Citation.] Thus, '[a] claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction.' [Citation.] Moreover, the 'forum contacts need not be directed at the plaintiff in order to warrant the exercise of specific jurisdiction.' [Citing *Von*'s, *supra*.] Indeed, ' " '[o]nly when the operative facts of the controversy are not related to the defendant's contact with the state can it be said that the cause of action does not arise from that [contact].' " ' " (*Snowney* at p. 1068, quoting *Vons*, *supra*, 14 Cal.4th at pp. 452, 455.)[16]

Indeed, our Supreme Court has determined this "substantial connection" need not have any relevance to establishing the plaintiff's claim. As we discussed, *Cornelison*, *supra*, 16 Cal.3d 143 was relied on by the Vons court in its articulation of this "substantial connection" standard. (*Vons*, *supra*, 14 Cal.4th at pp. 445-446, 448.) In *Cornelison*, the defendant, a Nebraska resident and a commercial trucker, was sued by a plaintiff, a resident of California, in a California court for his negligence in causing an accident in Nevada that killed plaintiff's husband. The defendant was on his way to California when he was involved in the accident.

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[16] The court rejected the invitation of amicus curiae Chamber of Commerce of the United States to reconsider Vons and adopt the substantive relevance test of relatedness. (*Snowney*, *supra*, 35 Cal.4th at p. 1068.)

Our Supreme Court determined that "California, consistent with the due process clause of the United States Constitution, may assert jurisdiction over a nonresident individual whose essentially interstate business has a relationship to this state, but whose allegedly tortious acts occurred outside the state." (*Cornelison*, *supra*, 16 Cal.3d at p. 146.) Regarding whether there was a substantial connection between the defendant's contacts with California and the plaintiff's claim, the court relied in part on the fact that the defendant had significant contacts with California, coming into the state twice a month for seven years as a trucker under a California license, and that the accident occurred not far from the California border, while defendant was bound for the state. (*Id.* at p. 149.) However, what appears to have tipped the balance for the court was the "interstate character of defendant's business." (*Id.* at p. 151.) The court stated, "Defendant's operation, by its very nature, involves a high degree of interstate mobility and requires extensive multi-state activity. A necessary incident of that business was the foreseeable circumstance of causing injury to persons in distant forums. While the existence of an interstate business is not an independent basis of jurisdiction which, without more, allows a state to assert its jurisdiction, this element is relevant to considerations of fairness and reasonableness. The very nature of defendant's business balances in favor of requiring him to defend here." (*Ibid.*)[17]

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[17] Although not related to the substantial connection question, the court also referred to the fact that the plaintiff, also a witness to the accident, was a California resident, and that California had an interest in providing her with a forum for her

C. *The "Minimum Contacts" and "Relatedness" Requirements are Met Here*

Although BMS's contacts with California that were described by the trial court no longer suffice under *Goodyear* and *Daimler* for assertion of general jurisdiction, they remain pertinent and persuasive for the first step of a specific jurisdiction analysis. BMS's extensive, longstanding business activities in California, including in particular its sale of 196 million Plavix pills between 1998 and 2006 and nearly $1 billion worth of Plavix in California between 2006 and 2012, five offices and facilities, hundreds of California-based employees and sales representatives, and long-time maintaining of an in-State agent for service of process bear no resemblance to the "random, fortuitous, and attenuated" interests held to be insufficient in *World-Wide Volkswagen* and *Walden*. They provide evidence of far more than the minimum contacts necessary under *International Shoe* to support the exercise of specific jurisdiction. Indeed, comparing the economic benefits BMS has derived from its California sales of Plavix and the extent and duration of its California contacts with those of the Washington franchisees in *Vons* and the Nevada hotels in *Snowney*, it is clear that BMS has far more contacts with California, including an extensive physical presence here. At oral argument, counsel for BMS conceded that BMS's contacts with

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claim. (*Cornelison*, *supra*, 16 Cal.3d at p. 151.) However, it also noted that some of the witnesses resided in Nevada. (*Ibid.*)

California satisfy the minimum contacts requirement for specific jurisdiction.[18]

The RPI have also satisfied the "relatedness" test because of the "substantial connection" between BMS's substantial, purposeful activities in California and the RPI claims. It is undisputed on

the record before us that, as stated by a BMS representative below via declaration, "BMS' work on the development, manufacture, labeling, and marketing of, and securing regulatory approvals for Plavix was performed or directed from BMS's New York headquarters and/or its New Jersey operating facilities. [¶] . . . None of the work to develop Plavix took place in California. Nor has BMS ever manufactured Plavix in California."

Nonetheless, it is also undisputed that BMS has had substantial, continuous contact with California for many years, including regarding the sale of Plavix. The evidence indicates that BMS has "deliberately exploited" the relevant market in the State (*Keeton*, *supra*, 465 U.S. at p. 781) for many years, having sold over 196 million Plavix pills in California between 1998 and 2006 and nearly $1 billion worth of Plavix between 2006 and 2012.

Further, plaintiffs allege BMS's Plavix sales in California have led to injuries to California residents that are the same as those suffered by the RPI. At

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[18] The nature and extent of BMS's contractual relationship with McKesson, and McKesson's relationship with the RPI, is not clear from the record. However, the fact that McKesson is headquartered in San Francisco is not disputed. Further, it is clear from the record that BMS has engaged McKesson as one of many distributors of Plavix over many years.

least 84, and perhaps as many as 251, California residents have sued BMS and McKesson in San Francisco because of perceived deficiencies in those pills which have caused such injuries in this state. If BMS is liable to any of the California plaintiffs because of proof which will be common for all plaintiffs, then those elements of each of the RPI's claims may also be established.

Moreover, the interstate character of BMS's business, and in particular its sales of Plavix, is also significant. In magnitudes far greater than was true regarding the relatively modest enterprise of the defendant trucker in *Cornelison*, a "necessary incident" of BMS's business is "the foreseeable circumstance of causing injury to persons in distant forums." (*Cornelison*, *supra*, 16 Cal.3d at p. 151.) While "not an independent basis of jurisdiction," it is relevant to a specific jurisdiction analysis. (*Ibid.*)[19]

Also, although the RPI injuries did not occur in the course of BMS's direct delivery of Plavix to the California market, plaintiffs allege, and the record suggests, that BMS sold product to both resident plaintiffs and the RPI as part of the distribution of Plavix in many states. In other words, the injuries are alleged to have occurred in the course of a common effort, another fact that weighs in favor of

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[19] As we have noted in footnote 9, *ante*, the *J. McIntyre* plurality disagreed with Justice Ginsburg's dissenting view that the marketing of a product with the expectation of nationwide sales was sufficient to support specific jurisdiction in that case. We do not mean to say it is sufficient by itself. However, nothing in *J. McIntyre* indicates it cannot be one of a number of factors considered in analyzing whether or not specific jurisdiction exists.

finding a "substantial connection" between BMS's contacts with California and the RPI's claims.

No California or federal case has been cited to us, and we have found none, in which this type of relationship between a non-resident corporate defendant, its very extensive California contacts, and the plaintiffs' claims has been examined. BMS does not discuss *Vons*, in its briefing, although the RPI do, and neither side discusses *Snowney*. Instead, BMS briefly discusses three earlier cases, an appellate court decision, *Spirits, Inc. v. Superior Court*, *supra*, 104 Cal.App.3d 918, 926, and two federal court decisions, *Glater v. Eli Lilly & Co.* (1st Cir.1984) 744 F.2d 213, 216 and *Jones v. N. Am. Aerodynamics, Inc.* (D.Me.1984) 594 F.Supp. 657, 660-662. At oral argument, counsel for BMS highlighted *Boaz v. Boyle & Co.* (1995) 40 Cal.App.4th 700, also briefly discussed in BMS's response to the amici for the RPI. *Boaz* is inapposite in light of the fact that it was conceded that the alleged injuries of the only California resident plaintiff had nothing to do with the California-related activities of the defendant who challenged jurisdiction, *none* of the plaintiffs' claims had *anything* to do with that defendant's contacts with California, and because of the modest nature of defendant's contacts, which were limited to "targeted mailers to physicians and advertising, principally if not entirely in national medical or medically related publications." (*Id.* at p. 717.) We do not find any of these cases persuasive regarding the present circumstances and need not discuss them further in light of our Supreme Court's later analyses and holdings in *Vons* and *Snowney*.

The reasoning of the United States and California Supreme Court cases we have discussed herein persuades us that BMS's activities are substantially connected to the RPI claims. In particular, the Supreme Court's analysis in *Keeton*, in which nonresident Hustler Magazine was required to appear in a New Hampshire court and answer charges that it had libeled non-resident plaintiff in numerous states via its sales of its magazine, even though only a small minority were sold in New Hampshire, indicates that a state court can assert jurisdiction against a nonresident accused by a nonresident of causing injuries, most of which occurred outside of the forum state. That both resident and non-resident plaintiffs are involved in the present suits (as opposed to the single plaintiff in *Keeton*) does not affect our conclusion.

Further, *Vons* teaches us that a defendant's contacts with California and their relatedness to the claims at hand are inversely related. (*Vons*, *supra*, 14 Cal.4th at p. 453.) In other words, " '[t]he more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim.' " (*Snowney*, *supra*, 35 Cal.4th at p. 1068, quoting *Vons*, *supra*, 14 Cal.4th at p. 455.) Thus, given BMS's substantial, continual contacts with California, including its extensive sales of Plavix here, the presence of dozens (not one or two) of resident plaintiffs who allege precisely the same wrongdoing by BMS and McKesson (also a California resident) as is alleged by the RPI, as well as the interstate nature of BMS's business and its nationwide sales of Plavix are even more significant in determining whether the RPI's

claims are sufficiently connected to BMS's California activity so that assertion of specific jurisdiction satisfies the traditional conception of fair play and substantial justice.

At oral argument, counsel for BMS suggested that finding specific jurisdiction appropriate in this case based on the similarity between the resident plaintiff's and the RPI's claims would permit "joinder to trump due process." This is not so. The identical nature of these claims is only one of a number of factors we have considered here. Further, it would be inappropriate to ignore so prominent an aspect of the matter before us as BMS asks us to do. As we have discussed, our own Supreme Court has noted that "the United States Supreme Court has rejected the use of 'talismanic jurisdictional formulas' (*Burger King*, *supra*, 471 U.S. at p. 485)" and instructed that "'"the facts of each case must [always] be weighed" in determining whether personal jurisdiction would comport with "fair play and substantial justice." '"(*Vons*, *supra*, 14 Cal.4th at p. 460.) Therefore, we decline to ignore the existence of the resident plaintiffs' claims in our relatedness analysis.

In short, we hold that the RPI have sustained their burden of showing sufficient contacts with California and the relatedness of these contacts to the claims at issue so as to satisfy the traditional test for specific jurisdiction under the United States and California Supreme Court cases discussed at length in this opinion.

D. *BMS Has Not Met Its Burden of Showing "Unreasonableness"*

Having determined that the RPI have met their initial burden of demonstrating facts justifying the exercise of specific jurisdiction (*Snowney*, *supra*, 35 Cal.4th at p. 1062), we now turn to BMS's burden, which is to demonstrate " ' "that the exercise of jurisdiction would be unreasonable." ' " (*Ibid.*; see also *Burger King*, *supra*, 471 U.S. at p. 477 ["where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable"].)

In determining whether BMS has met its burden, we review the factors identified by the United States Supreme Court and our Supreme Court that are to be considered in determining whether requiring BMS to defend here comports with the traditional conception of fair play and substantial justice. An appellate court " ' "must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination 'the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.' " ' "(*Snowney*, *supra*, 35 Cal.4th at p. 1070, quoting *Vons*, *supra*, 14 Cal.4th at p. 476 and *Asahi*, *supra*, 480 U.S. at p. 113.)

Although BMS did not concede that it cannot satisfy this burden, neither has it made any effort to show why it should not be required to defend here,

other than to argue that the RPI's claims are not sufficiently related to BMS's contacts with California. Nonetheless, we examine each of the factors and conclude BMS has not met its burden.

1. *BMS Has Not Shown Undue Burden In Defending Here*

BMS has provided no evidence that it would be unduly burdened if required to defend the RPI claims here. Nor could it. BMS may incur a substantial burden in defending the claims of the dozens, if not hundreds of California residents here. But whatever that burden proves to be, it will be incurred whether or not the RPI are allowed to bring their claims here as well.

While some additional burden may be attributed to defending the RPI's claims in addition to those of the California residents, BMS has made no effort to show what that burden would be, much less that it would be undue.

Further, whatever the incremental burden may be of combining the RPI's claims with those of the resident California plaintiffs, logic dictates that in order to determine whether it would be undue, BMS must show that it would be substantially greater than BMS would incur in defending each of the RPI's claims in his or her state of residence. Certainly if the RPI were forced to give up the benefits of combining their cases here, they would have the option of suing BMS in each of those states and not just in New York or Delaware.[20] Yet BMS has made

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[20] The RPI suggest that BMS seeks dismissal of their claims in order to force the RPI to refile in other states, allowing BMS to try again to remove the cases to federal courts and then have

no effort to address any difference in burden to it over defending in San Francisco versus the many other possible locations where the RPI could sue it.

To be sure, substantial pretrial preparation and discovery will be required in all of these cases. But the depositions of plaintiffs' prescribing and treating physicians, and of plaintiffs, will likely be taken in their states of residence regardless of where the RPI's claims are pursued. The discovery of BMS's key witnesses and documents will likely take place in New York and New Jersey, where those witnesses and key documents are likely located, regardless of where the RPI's claims are filed. BMS has not shown that any of these expenses will be greater if the cases proceed here.

Nor has BMS shown that the burden of having its counsel appear in San Francisco for case management conferences and hearings on motions will be any greater than would be the burden of appearing throughout the country. While it may be

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them transferred to the MDL court in the District of New Jersey, where its defenses might be more favorably received than in state courts. At oral argument, counsel for BMS did not dispute BMS's practice of removing cases against it to federal court and seeking to have them combined in the MDL proceeding in New Jersey. He candidly acknowledged that if each of the RPI is required to refile in his or her home state, New York, or New Jersey, fewer cases will be filed against BMS. BMS's due process rights do not include discouraging plaintiffs who may or may not have meritorious claims from pursuing them in an appropriate forum. Nor does due process entitle BMS to avoid the differences in procedures that exist between state and federal courts, such as regarding the standards for summary judgment, the admissibility of expert testimony, and the unanimity of jury verdicts.

less costly for counsel to travel to some parts of the country than to fly to San Francisco, because of the California residents' claims counsel will be coming here anyway and can coordinate any RPI-specific motion with other California activity.

Should plaintiffs' claims survive BMS's likely motions for summary judgment and should it prove necessary for one or more of these cases to be tried in order for the parties to agree upon a range of values upon which the rest likely will be settled,[21] once again, BMS has provided no evidence that trial in San Francisco would be more costly for it than trial in, for example, Portland, Chicago, Cleveland, or Dallas.

BMS has summarily argued that it would be prejudiced by not being able to bring witnesses to San Francisco for trial, such as plaintiffs' treating physicians and other experts. That argument ignores the teachings of *McGee* and *Burger King* that the inquiry into fairness must take into account modern developments in commerce, transportation, and indeed, the manner in which litigation is conducted. Excellent quality video depositions of trial witnesses, including parties and experts, are now the norm, not the exception, in high stakes

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[21] Professor Marc Galanter has reported that trials nationwide accounted for only 1.8 percent of dispositions in civil cases in 2002, down from 11.5 percent in 1962. (See Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts* (2004) 1 J. Empirical Legal Studies 459, 462–463.) BMS has presented no data suggesting that the likelihood of trials in "big pharma" cases in California like this one approaches the national average as it existed in 2002 or today.

litigation such as this. Indeed, our Discovery Act has specific provisions for the taking of depositions outside California and for their use at trial.

In short, BMS has not demonstrated meaningful, much less undue, burden.

2. *California Has an Interest in Providing a Forum for the RPI's Claims*

As we discussed above, the paradigm case for the application of specific jurisdiction is when the out of state defendant causes injury to plaintiff in his or her home state and the suit is brought there. That is because the state has a " 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors" (*Burger King*, *supra*, 471 U.S. at p. 473), as well as a special interest in deterring wrongful conduct within its boundaries. (See, e.g., *Keeton*, *supra*, 465 U.S. at p. 776.) Because the RPI are not California residents and were not injured here, those state interests are diminished with respect to them.

But those state interests apply with full force to the dozens, if not hundreds, of California plaintiffs who are part of this suit. BMS would have us analyze its motion to quash as if those California plaintiffs play no role in the reasonableness analysis. They would also have us ignore the presence in this suit of co-defendant McKesson, which is based in San Francisco and which distributes Plavix for BMS. This is wrong.

It is true that, for purposes of determining minimum contacts, it is the contact of the defendant with the forum, and not that of the plaintiffs or codefendants, which is paramount. (*Walden*, *supra*,

134 S.Ct. at p. 1122-1123; *Vons*, *supra*, 14 Cal.4th at pp. 457-458.) But when examining the question of reasonableness, it is entirely appropriate to consider the convenience to other actors in this drama, meaning California resident plaintiffs and California-based co-defendant McKesson, of litigating claims with the RPI together in one action here when evaluating California's interest in providing a forum for this dispute. (See *Burger King*, *supra*, 471 U.S. at p. 473.) And because the claims of the California plaintiffs are the same as the claims of the RPI, and because BMS has sold many tens of millions of Plavix pills to California residents, California has an interest, if not as strong an interest, in deterring dangerous conduct with respect to the RPI. BMS has not shown otherwise.

3. *Plaintiffs Have Demonstrated Interest In San Francisco as a Convenient and Effective Forum*

Plaintiffs' counsel in this matter hale from New York, California and Washington D.C. They have decided to bring these actions in California, they say, because a plurality of the plaintiffs in the original group of 659 are California residents. Further, they argue, but without providing competent evidence, California provides a forum in which they can sue both BMS and McKesson in the same case or cases. Be that as it may, plainly plaintiffs' position is that the San Francisco Superior Court provides a convenient and effective forum. Given this assertion, we see no reason why they should not be allowed to proceed here, absent a jurisdictional or other compelling reason to the contrary. BMS has not provided one.

4. *Judicial Economy*

BMS has made no attempt to demonstrate that judicial economy would not be served by allowing these cases to go forward here. Nor could it. While there will undoubtedly be an incremental burden on the superior court in managing the RPI cases along with those of the California resident plaintiffs, that burden pales in comparison with requiring judges in 33 states all to become involved in the discovery, motion, and trial practice that may be necessary to resolve these cases. Indeed, it pales in comparison with the incremental burden of asking the trial court just to coordinate its cases with those in multiple other jurisdictions so that, for example, the same discovery issues are not litigated and relitigated time and again, such as because of protective orders regarding confidentiality adopted at BMS's request.

Further, allowing these cases to go forward here will benefit not only all plaintiffs and the courts, but defendant. It is difficult to see how it would be more efficient for BMS to litigate the same issues in multiple fora throughout the country. To the extent that the RPI would be discouraged from suing BMS in many states where no "critical mass" exists to support a common effort against BMS, that possibility does not weigh in favor of granting BMS's motion.[22] Be that as it may, BMS has not shown how judicial economy would be served by granting its motion to quash.

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[22] See footnote 20, *ante*.

III. *Pendent Personal Jurisdiction*

The RPI mention, but make no effort to develop, an argument pertaining to "pendent personal jurisdiction." Amici for the RPI, Consumer Attorneys of California and American Association for Justice, develop that theory through discussion of such cases as *Action Embroidery Corp. v. Atlantic Embroidery, Inc.* (9th Cir.2004) 368 F.3d 1174 (*Action Embroidery*). A review of those cases makes clear that "pendent personal jurisdiction" is a federal common law doctrine developed to permit jurisdiction over non-resident defendants with respect to state law claims brought under the federal courts' discretionary supplemental jurisdiction. It was developed because some federal law claims, such as violations of the federal antitrust laws, may be brought in any federal district court (subject to venue considerations). However, related state law claims "aris[ing] out of the same nucleus of operative facts" require a showing of appropriate personal jurisdiction under the laws of the state where such state law claims were brought. To avoid piecemeal litigation of claims brought by the same plaintiff against the same defendant, this doctrine was developed.

Contrary to the arguments of amici, "pendent personal jurisdiction" has no bearing on the analysis of whether claims by non-resident plaintiffs, that is, different plaintiffs, may proceed with those of resident plaintiffs. However, the policy reason at the heart of pendent personal jurisdiction is equally applicable here: As Judge William Fletcher wrote in *Action Embroidery*: "When a defendant must appear in a forum to defend against one claim, it is often

reasonable to compel that defendant to answer other claims in the same suit arising out of a common nucleus of operative facts. We believe that judicial economy, avoidance of piecemeal litigation, and overall convenience of the parties is best served by adopting this doctrine." (*Action Embroidery*, *supra*, 368 F.3d at p. 1181.) While pendent personal jurisdiction has no application to the issues before us, the policy behind it of encouraging judicial economy, avoiding piecemeal litigation, and encouraging convenience of the parties applies here with equal force.

DISPOSITION

For the foregoing reasons, the trial court properly denied BMS's motion to quash service of the summons regarding the RPI complaints. The order to show cause is DISCHARGED. The petition is denied.

We concur:

Kline, P.J.

Richman, J.

Cal.App. 1 Dist., 2014

Filed: July 30, 2014

APPENDIX C

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 305

Judicial Council Coordinated
Proceeding No. 4748

Coordination Proceeding
Special Title
[Rule 3.550]

PLAVIX PRODUCT AND MARKETING CASES

ORDER DENYING DEFENDANT BRISTOL-MYERS SQUIBB COMPANY'S MOTION TO QUASH SERVICE OF SUMMONS FOR LACK OF PERSONAL JURISDICTION

Defendant Bristol-Myers Squibb Company ("BMS") moves the Court for an order quashing service of the summons and complaint upon it in these coordinated cases for lack of personal jurisdiction. For the reasons that follow, the Court denies the motion.

Plaintiffs allege that they suffered bodily injury and economic harm by using Plavix, a drug manufactured and sold by BMS. The claims are brought by 659 plaintiffs, 575 of whom reside outside of California. BMS contends that this Court lacks

personal jurisdiction over the claims of 575 of the plaintiffs because those plaintiffs are "not residents of California and do not allege any connection with this State or with each other." Notice at p. 1.

The standards for the exercise of personal jurisdiction by a state over a defendant are well-settled:

> There are two concepts of personal jurisdiction upon which the state can base jurisdiction over a defendant: general jurisdiction and special, or transactional, jurisdiction. California's long-arm statute authorizes California courts to exercise jurisdiction over nonresidents on any basis not inconsistent with the federal or state Constitution. (Code Civ. Proc., § 410.10.) The due process clause of the United States Constitution permits personal jurisdiction over a party in any state with which the party has "certain minimum contacts ... such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 (1945). "If a nonresident's activities are sufficiently wide-ranging, systematic and continuous, it may be subject to jurisdiction within the state on a cause of action unrelated to those activities. [General jurisdiction.]" *Walter v. Superior Court* (1986) 178 Cal.App.3d 677, 680.

Hesse v. Best Western Internat., Inc. (1995) 32 Cal.App.4th 404, 408 (internal quotations omitted). Those standards were left undisturbed by the Supreme Court in *Goodyear Dunlop Tires Operations, S.A., v. Brown* (2011) 131 S.Ct. 2846, the

case upon which BMS principally relies. In short, a defendant's wide-ranging, systematic and continuous contacts with a forum state justify the exercise of general jurisdiction over that defendant.

BMS sold nearly $1 billion worth of Plavix in California between September 2006 and November 2012. Ezrin Decl. ¶ 3, Ex. A. BMS sold over 196 million Plavix pills in California between 1998 and 2006. Ezrin Decl. ¶ 4, Ex. B. Since 1936, BMS has been registered with the service of process in Los Angeles. Ezrin Decl. ¶ 6, Ex. D. According to the Declaration of Glenn Gerecke, BMS's Vice President, Engineering and Facilities Services:

> BMS operates five offices in California that employ approximately 164 people. In addition, BMS employs approximately 250 sales representatives who serve in California. One of BMS's offices, in Milpitas [California], is owned by BMS, and the remainder are leased. The Milpitas facility is used primarily for research and employs 85 people. Three other offices are primarily used as research and laboratory facilities. They are located in Aliso Viejo, San Diego and Sunnyvale [California]. A small office in Sacramento is used by the company's Government Affairs group.

Gerecke Decl. ¶ 3 (McLaughlin Decl. Ex. C).

BMS contends that these facts do not warrant this Court's exercise of general jurisdiction over it. The Court disagrees.

The Court in *Hesse* determined that California courts had general jurisdiction over an out-of-state hotel company based on contacts with California far

less extensive than BMS's here. *Hesse*, *supra*, 32 Cal.App.4th 404 at 407-08. BMS's wide-ranging, continuous, and systematic activities in California, as detailed above, are clearly sufficient to establish that Court's has general jurisdiction over it. Because BMS engages in extensive activities in California, and thus enjoys the benefits and protections of its laws, this Court's exercise of jurisdiction over BMS comports with "traditional notions of fair play and substantial justice." *International Shoe*, *supra*, 326 U.S. 310, 316, 319. BMS's conduct in and connection with California are such that BMS "should reasonably anticipate being haled into court" here. *World-Wide Volkswagen Corporation v. Woodson* (1980) 444 U.S. 286, 297.

BMS's Motion is denied.

IT IS SO ORDERED.

September 23, 2013.

/s/ John E. Munter

John E. Munter

Judge of the San Francisco Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Case No. CJC-13-004748

Coordination Proceeding
Special Title
[Rule 3.550]

PLAVIX PRODUCT AND MARKETING CASES

CERTIFICATE OF ELECTRONIC SERVICE (CCP 1010.6(6) & CRC 2.260(g))

I, Craig Blackstone, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On September 23, 2013, I electronically served the ORDER DENYING DEFENDANT BRISTOL-MYERS SQUIBB COMPANY'S MOTION TO QUASH SERVICE OF SUMMONS FOR LACK OF PERSONAL JURISDICTION via File & ServeXpress on the recipients iesignated on the Transaction Receipt located on the File & ServeXpress website.

Dated: September 23, 2013

T. Michael Yuen, Clerk

By: */s/ Craig Blackstone*

Craig Blackstone, Deputy Clerk